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# **Economic Development, Trade & Banking Committee**

**Thursday, March 30, 2006  
9:45 am – 12:00 pm  
306 HOB**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

### **Economic Development, Trade & Banking Committee**

**Start Date and Time:** Thursday, March 30, 2006 09:45 am

**End Date and Time:** Thursday, March 30, 2006 12:00 pm

**Location:** 306 HOB

**Duration:** 2.25 hrs

#### **Consideration of the following bill(s):**

HB 69 CS Exemptions from the Tax on Sales, Use, and Other Transactions by Meadows

HB 1079 Exemption from the Tax on Sales, Use, and Other Transactions by Altman

HB 1283 Innovation Incentives by Attkisson

HB 1285 Public Records Exemptions by Attkisson

HB 1311 Qualified Job Training Organizations by Troutman

HB 1467 Capital Formation by Grant

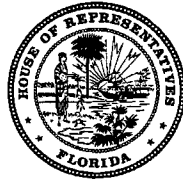
HB 1469 Public Records by Grant

#### **Consideration of the following proposed committee bill(s):**

PCB EDTB 06-05 -- Oil & Gas Drilling

According to rule 7.22(c), non-appointed members must file amendments by 5 p.m., Wednesday, March 29, 2006. The Chairman requests that committee member amendments also be filed by 5 p.m., Wednesday, March 29, 2006.

**NOTICE FINALIZED on 03/28/2006 11:54 by GOLDING.SARA**



# **The Florida House of Representatives**

## **Commerce Council**

### **Economic Development, Trade & Banking Committee**

**Allan G. Bense**  
Speaker

**Gus Michael Bilirakis**  
Chair

## **Agenda** **March 30, 2006**

### **I. Roll Call**

### **II. Welcome and Opening Remarks**

### **III. Consideration of the following bills :**

HB 1283 – Innovation Incentives

by: Representative Attkisson

HB 1285 – Public Records Exemptions

by: Representative Attkisson

HB 1467 – Capital Formation

by: Representative Grant

HB 1469 – Public Records

by: Representative Grant

PCB EDTB 06-05 – Oil & Gas Drilling

by: Representative Bilirakis

HB 69 CS – Exemptions from the Tax on Sales, Use, and Other Transactions

by Representative Meadows

HB 1079 – Exemption from the Tax on Sales, Use, and Other Transactions

by: Representative Altman

HB 1311 – Qualified Job Training Organizations

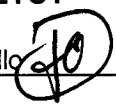

by: Representative Troutman

### **IV. Adjourn**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1283                      Innovation Incentives  
**SPONSOR(S):** Attkisson and others  
**TIED BILLS:** HB 1285                      **IDEN./SIM. BILLS:** SB 2728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee		Olmedillo 	Carlson 
2) Fiscal Council			
3) Commerce Council			
4) _____			
5) _____			

### SUMMARY ANALYSIS

The bill creates within the Office of Tourism, Trade, and Economic Development (OTTED) the Innovation Incentive Program for qualified innovation businesses (Program). The purpose of the Program is to improve the state's ability to compete effectively in attracting science-based research projects of significant scale and world class excellence and innovation business projects to this state.

The bill establishes the Innovation Incentive Account within the Economic Development Trust Fund (EDTF). The bill transfers \$250,000,000 from the General Revenue Fund to the Innovation Incentive Account within EDTF for fiscal year 2006-2007. The bill appropriates \$50,000,000 from the Innovation Incentive Account within the EDTF to OTTED beginning in the fiscal year 2006-2007 and annually thereafter for 4 fiscal years. The bill requires the allocation to be used to implement the purposes of the Innovation Incentive Program.

The bill requires Enterprise Florida, Inc. (EFI) to evaluate applications for incentive awards and make recommendations to OTTED, which in turn, shall make recommendations for approval to the Governor. The bill requires the Governor to consult with the Legislature and receive approval prior to releasing funds.

The bill provides an effective date and repeal date of July 1, 2006 and July 1, 2011, respectively.

See Fiscal Comments for fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates the Innovation Program for qualified innovation businesses and appropriates \$250,000,000 to the Innovation Incentive Account.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Quick Action Closing Fund

The 1999 Legislature created the Quick Action Closing Fund (QACF) (s. 288.1088, F.S.) within the Office of Tourism, Trade, and Economic Development for the purpose of helping Florida compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities.<sup>2</sup> Enterprise Florida, Inc., evaluates proposals for the use of the Quick Action Closing Fund, and makes recommendations to OTTED.<sup>3</sup>

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds.

The Governor must consult with the Legislature before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S. This requires notice to the Legislative Budget Commission, which may deny the funding request if it exceeds the delegated authority of the Governor or is contrary to legislative policy and intent.

Once approved by the Governor, OTTED enters into a performance contract with the business and establishes the conditions for payment of moneys from the QACF.

EFI shall validate the contractor's performance and provide a report regarding such performance to the Governor, the President of the Senate and the Speaker of the House, within 6 months after completion of the contract.

The Governor may, in an emergency or special circumstance, and in consultation with the Legislature pursuant to s. 216.177, reallocate unencumbered funds appropriated to the QACF to supplement statutorily created economic development programs and operations.

##### **Effect of Proposed Changes**

###### Background

In a press release dated January 30, 2006, Governor Bush launched new economic development initiatives to bolster the state's efforts to diversify and build Florida's Innovation Economy. To coincide with this initiative, the Governor is recommending a \$630 million investment in the 2006-2007 budget for programs that will generate the innovation needed to create the industries of the future; this includes \$250 million to create the Florida Innovation Incentive Fund to enable Florida to take advantage of

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<sup>2</sup> The 1996 Legislature created the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor. OTTED is responsible for promoting economic development, tourism, and international trade. OTTED oversees the activities public-private partnerships, including Enterprise Florida, Inc. (s. 14.2015, F.S.).

<sup>3</sup> In 1992, the Legislature created Enterprise Florida, Inc. (EFI), to assist in the coordination of the state's economic development efforts and to develop a strategic plan for economic development for Florida (s. 288.901, F.S.).

"once-in-a-lifetime opportunities" and big, statewide priorities that will yield a significant return for the tax payer in the long run.

#### Appropriations

The bill transfers \$250,000,000 from the General Revenue Fund to the Innovation Incentive Account within EDTF. The bill appropriates \$50,000,000 from the Innovation Incentive Account to OTTED beginning in the fiscal year 2006-2007 and annually thereafter for 4 fiscal years. The allocation must be used to implement the purposes of the Innovation Incentive Program. In addition, during the fiscal years to which this act applies, OTTED may request additional budget authority necessary to locate a new business in Florida or expand an existing business, if such request meets the purposes of the Innovation Incentive Program and is approved pursuant to s. 288.1089(8), F.S. However, the total funds used to implement the Innovation Incentive Program shall never exceed the total amount funded, which is \$250,000,000.

#### Innovation Incentive Program

The bill creates within OTTED the Innovation Incentive Program for qualified innovation businesses and establishes the Innovation Incentive Account within the Economic Development Trust Fund. The purpose of the Program is to ensure the availability of sufficient resources to respond to extraordinary economic opportunities and compete effectively for science-based research projects of significant scale and world class excellence, and innovation business projects in this state.

#### Definitions

The bill provides the following definitions:

- "Average wage" means the statewide private sector average wage or the average of all private sector wages and salaries in the county or in the standard metropolitan area in which the applicant is located as determined by the Agency for Workforce Innovation.
- "Competitive gap" means the difference between the cost and benefits of locating the project in this state versus identified locations under consideration in other states or countries when the total cost of start-up and operations, incentive offers, and other relevant factors are considered in this state versus those alternative locations.
- "Cumulative investment" means the total private investment in buildings and equipment made by a qualified, new business since the beginning of construction of such facility or an expanding business in this state since the beginning of the expansion project.
- "Director" means the director of the Office of Tourism, Trade, and Economic Development.
- "Eligible business" means a business meeting the requirements of the bill.
- "Fiscal year" means the state fiscal year.
- "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of a project facility.
- "Match" means funding from local sources, public or private, which is paid to the qualified business and which is equal to 100 percent of an award. Eligible match funding may include any tax abatement granted to that business under s. 196.1995 or the appraised market value of land, buildings, infrastructure, or equipment conveyed or provided at a discount to that business.
- "Office" means the Office of Tourism, Trade, and Economic Development.
- "Predominately" means at least 50 percent of the time.
- "Qualified business" means an eligible business that has been approved to receive an economic investment innovation fund incentive award.
- "Research and development" means basic and applied research in the sciences or engineering, as well as the design, development, and testing of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, nontechnological activities, or technical services.

- "Research and development facility" means a facility that is predominately engaged in research and development activities.

#### Application

A business or research and development entity shall submit an application to Enterprise Florida, Inc. (EFI), prior to deciding to locate or expand in Florida, which shall include:

- The applicants' Federal Employer Identification Number (FEIN), unemployment account number, state sales tax registration number;<sup>4</sup>
- The proposed location of a project within Florida;
- A description of the type of business activity, product, or research and development undertaken by the project, including North American Industry Classification codes;
- The applicant's projected investment in project;
- The total investment from all sources in the project;
- The anticipated number of net new full-time equivalent jobs created as of December 31st of each year in Florida and the average wage of such jobs;
- The total number of full-time equivalent employees currently employed by the applicant in Florida and the number employed at the facility;
- The anticipated project commencement date;
- An explanation regarding the significance of the award as a factor to induce business to locate or expand in Florida; and
- An estimate of proportion of revenues from project that will be generated outside Florida, if applicable.

#### Eligibility

To be eligible, an applicant must establish the following to the satisfaction of EFI and OTTED:

1. The proposed jobs will pay at least 130% of the average private sector wage in the anticipated location area or statewide. OTTED may waive this requirement at its discretion or at the request of EFI, only if:
  - Project is located in brownfield area, rural city, rural county, or in an Enterprise Zone,
  - The merits of the project or specific circumstances in the community in relationship to the project warrant such action;
  - If Enterprise Florida, Inc. recommends such waiver, it must be in writing and explain justification for such waiver; and
  - If the director of OTTED waives the requirement, it must be stated in writing and explained the justification for such waiver.
2. For research and development projects, the project will serve as a catalyst for an emerging or evolving technology cluster, demonstrate a plan for significant higher education collaboration, provide the state a break-even return on investment within a 20-year period, and receive a one-to-one match from the local community. However, the match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural communities, brownfields, and enterprise zones within an urban county.
3. For innovation business projects, the project will:
  - Create at least 1,000 direct, new jobs at the business; or if the project is located in a rural city or rural county, the project will create at least 750 direct, new jobs.
  - The activity or product for the applicant's project must be within an industry or industries that have been designated as a target industry business under s. 288.106 or a high-impact sector under s. 288.108.

<sup>4</sup> These items must be provided if available, however, they shall be provided prior to disbursement.



- The cumulative investment in the project is at least \$500 million within a 3-year period; or if the project is located in a rural city or rural county, or in an enterprise zone, the cumulative investment in the project must exceed \$375 million within a 3-year period.

#### Evaluation

The bill requires Enterprise Florida, Inc, to evaluate proposals for innovation incentive projects and recommend use of appropriated funds to OTTED. In its recommendation to OTTED, Enterprise Florida, Inc. must:

- Describe the type of operation, its required facilities, and the associated product, service, or research and development associated with the project;
- Provide the number of full-time equivalent jobs that will be created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs stimulated by the investment;
- Provide the amount of the cumulative investment to be dedicated to the project within 3 years and the total investment expected in the project if more than 3 years;
- Describe the economic and fiscal impacts on the local and state economies relative to the investment
- Provide a statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges;
- Provide a statement of any anticipated or proposed relationships with state universities;
- Provide a statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state;
- Provide a recommendation of the amount of the innovation incentive that is needed to close a competitive gap, including an explanation of why an incentive of that amount is needed to induce the applicant to expand or locate in this state;
- Provide a discussion of the efforts and commitments made by the local community in which the project is to be located to induce the project location or expansion, taking into consideration local resources and abilities;
- Provide a recommendation for specific performance criteria the applicant would be expected to achieve to receive any payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions; and

For research and development facility projects, Enterprise Florida, Inc. must:

- Provide OTTED with a description of the projects' potential to serve as a catalyst for an emerging or evolving technology cluster;
- Provide the percentage of match provided for the project;
- Describe the extent to which the project has or could have a long-term collaborative research and development relationship with a state university or community college;
- Describe the existing or projected impact of the project on established technology clusters or targeted industry sectors;
- Describe the project's contribution to the diversity and resiliency of the innovation economy of Florida; and
- Describe the project's impact on special needs communities, including rural areas, distressed urban areas, and enterprise zones.

#### Negotiation of Awards/Process for Approval

OTTED may negotiate the proposed award for any eligible applicant, after consultation with Enterprise Florida, Inc., taking into consideration the incentive needed to close the competitive gap, and other relevant potential impact, cost information and analysis. Emphasis must be given to those projects with a potential to stimulate additional private investment and high-quality employment opportunities.

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. In addition, OTTED must provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds. The Governor must consult with the President of the Senate and Speaker of the House of Representatives before giving approval. Thereafter, the Governor shall release funds pursuant to the requirements of s. 216.177, F.S. This requires notice to the Legislative Budget Commission, which may deny the funding request if it exceeds the delegated authority of the Governor or is contrary to legislative policy and intent. This process takes between 3-14 days.

#### Performance Contract

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions and the payment of moneys from the Account. Conditions in the contract include those factors identified by Enterprise Florida, Inc. in its request to OTTED, and sanctions for not meeting performance conditions. Enterprise Florida, Inc. shall assist OTTED in validating the performance of the contract. Moreover, at the conclusion of the agreement, Enterprise Florida, Inc., shall report, within 90 days, the result of the innovation incentive award to the Governor and the Legislature.

#### Economic Development Trust Fund

Funds allocated to EDTF shall be invested pursuant to s. 17.57 and any interest earned on such investments shall be transferred from EDTF to the General Revenue Fund.<sup>5</sup>

#### Governor's Authority to Use Account funds

The bill authorizes the Governor, in an emergency basis or special circumstance, and in consultation with the Senate and House of Representatives, pursuant to s. 216.177, to reallocate unencumbered funds appropriated to the Innovation Incentive Program to supplement economic development programs and operation established by law.

Effective Date; Repeal of Prior Acts The bill provides that the law will take effect on July 1, 2006 and will be repealed on July 1, 2011. Any unobligated funds remaining in EDTF shall be transferred back to the General Revenue Fund.

### C. SECTION DIRECTORY:

- Section 1. Creates s. 288.1089, F.S.; providing legislative findings and intent; definitions, awards, limitations, application procedure, eligibility requirements, review and award process, investment of funds, report requirements, additional uses of appropriations.
- Section 2. Provides a repeal date of July 1, 2011 and provides for the transfer of remaining funds.
- Section 3. Provides transfer of funds to the Innovation Incentive Account.
- Section 4. Provides appropriations and limitations.
- Section 5. Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill transfers \$250,000,000 from the General Revenue Fund to the Innovation Incentive Account within EDTF. The bill appropriates \$50,000,000 from the Innovation Incentive Account within the EDTF to OTTED beginning in the fiscal year 2006-2007 and annually thereafter for 4 fiscal years.

<sup>5</sup> s. 17.57, F.S., provides procedures to deposit and invest state money.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

1. On line 233, the bill refers to a "rural city or rural city." The latter term should be replaced with "county" to make the bill internally consistent.
2. The bill authorizes the Governor, in an emergency or special circumstance to seek approval to reallocate unencumbered funds appropriated to EDTF to supplement statutorily created economic development programs and operations through the legislative consultation and review requirements set forth in s. 216.177, F.S. The terms "emergency" and "special circumstance" are undefined and are unclear.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

1                   A bill to be entitled  
2       An act relating to innovation incentives; creating s.  
3       288.1089, F.S.; providing legislative findings and intent;  
4       creating within the Office of Tourism, Trade, and Economic  
5       Development the Innovation Incentive Program for certain  
6       purposes; providing definitions; limiting innovation  
7       incentive awards; establishing the Innovation Incentive  
8       Account within the Economic Development Trust Fund;  
9       providing award application and eligibility requirements  
10      and procedures; providing business applicant qualification  
11      requirements; providing proposal evaluation and  
12      recommendations requirements for Enterprise Florida, Inc.;  
13      authorizing the office to negotiate award amounts to  
14      applicants; providing negotiation requirements; requiring  
15      the director of the office to make recommendations to the  
16      Governor for approval or disapproval of certain projects;  
17      providing recommendation requirements; requiring  
18      consultation with the Legislature; providing for  
19      certification of applicants as qualified innovation  
20      businesses; providing for incentive payment agreements;  
21      providing requirements for investment of funds in the  
22      Innovation Incentive Account within the Economic  
23      Development Trust Fund; requiring Enterprise Florida,  
24      Inc., to assist the office in validating certain business  
25      performances; requiring a report; authorizing the Governor  
26      to reallocate certain funds for certain purposes;  
27      providing for transfer of certain unallocated funds to the  
28      General Revenue Fund; providing for future repeal of s.

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288.1089, F.S., relating to the Innovation Incentive Program; providing appropriations; providing limitations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.1089, Florida Statutes, is created to read:

288.1089 Innovation incentive.--

(1) LEGISLATIVE FINDINGS AND INTENT; CREATION OF INNOVATION INCENTIVE PROGRAM.--

(a) The Legislature finds that science-based research projects of significant scale and world-class excellence can help to strengthen and expedite the growth of the innovation economy of this state. World-class research institutes and research and development operations can serve as catalysts for evolving technology clusters, boost the talent base of this state at the very highest levels, benefit the existing research and university base of this state with increased research and development collaboration, and help to spawn new businesses based in this state. Serious regional, national, and international competition exists for these projects and in most instances, when all available resources for economic development have been used, the state continues to encounter severe competitive disadvantages in vying for these research and development opportunities.

(b) The Legislature further finds that attracting, retaining, and providing favorable conditions for the growth of

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57 certain innovation business operations in this state provides  
58 widespread economic benefits to the public through high-quality  
59 employment opportunities at such operations and in related  
60 operations attracted to this state or region through an enhanced  
61 entrepreneurial climate in the state or region, and the  
62 resulting business and employment opportunities, and through the  
63 stimulation and enhancement of the state's universities and  
64 community colleges. As with research and development operations,  
65 when all available resources for economic development have been  
66 used, the state continues to encounter severe competitive  
67 disadvantages in vying for these high-impact business  
68 operations.

69 (c) It is the intent of the Legislature to provide  
70 resources to meet the unique needs of attracting the growth and  
71 location of catalyst projects in this state of a significant  
72 scale that will serve as platforms for emerging or evolving  
73 technology clusters or increase research, development, and  
74 collaboration between the universities of this state and the  
75 state's private sector and, in so doing, make meaningful  
76 progress toward an unparalleled state of innovation.

77 (d) The Legislature therefore hereby creates within the  
78 Office of Tourism, Trade, and Economic Development the  
79 Innovation Incentive Program for qualified innovation businesses  
80 to ensure that sufficient resources shall be available to  
81 respond to extraordinary economic opportunities and to compete  
82 effectively for those research and development operations and  
83 innovation business projects in this state.

84 (2) DEFINITIONS.--As used in this section:

(a) "Average wage" means the statewide private sector average wage or the average of all private sector wages and salaries in the county or in the standard metropolitan area in which the applicant is located as determined by the Agency for Workforce Innovation.

(b) "Competitive gap" means the difference between the cost and benefits of locating the project in this state versus identified locations under consideration in other states or countries when the total cost of start-up and operations, incentive offers, and other relevant factors are considered in this state versus those alternative locations.

(c) "Cumulative investment" means the total private investment in buildings and equipment made by a qualified, new business since the beginning of construction of such facility or an expanding business in this state since the beginning of the expansion project.

(d) "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(e) "Eligible business" means a business meeting the requirements of subsection (5).

(f) "Fiscal year" means the state fiscal year.

(g) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of a project facility.

113       (h) "Match" means funding from local sources, public or  
114 private, which is paid to the qualified business and which is  
115 equal to 100 percent of an award. Eligible match funding may  
116 include any tax abatement granted to that business under s.  
117 196.1995 or the appraised market value of land, buildings,  
118 infrastructure, or equipment conveyed or provided at a discount  
119 to that business. Complete documentation of a match payment or  
120 other conveyance must be presented to and verified by the office  
121 prior to transfer of state funds to the qualified business. A  
122 qualified business may not provide, directly or indirectly, more  
123 than 5 percent of match funding in any fiscal year. The sources  
124 of such funding may not include, directly or indirectly, state  
125 funds appropriated from the General Revenue Fund or any state  
126 trust fund, excluding tax revenues shared with local governments  
127 pursuant to law.

128       (i) "Office" means the Office of Tourism, Trade, and  
129 Economic Development.

130       (j) "Predominately" means at least 50 percent of the time.

131       (k) "Qualified business" means an eligible business that  
132 has been approved to receive an economic investment innovation  
133 fund incentive award.

134       (l) "Research and development" means basic and applied  
135 research in the sciences or engineering, as well as the design,  
136 development, and testing of prototypes or processes of new or  
137 improved products. Research and development does not include  
138 market research, routine consumer product testing, sales  
139 research, research in the social sciences or psychology,  
140 nontechnological activities, or technical services.



141        (m) "Research and development facility" means a facility  
142        that is predominately engaged in research and development  
143        activities.

144        (3) INNOVATION INCENTIVE AWARDS; LIMITATION.--The total  
145        amount of active innovation incentive awards may not exceed the  
146        amount remaining in the Innovation Incentive Account within the  
147        Economic Development Trust Fund, which account is established.

148        (4) AWARD APPLICATION; ELIGIBILITY.--To be eligible for  
149        consideration for an innovation incentive award, a business or  
150        research and development entity must submit a written  
151        application to Enterprise Florida, Inc., before the applicant  
152        has made the decision to locate new operations in this state or  
153        before the applicant has made the decision to expand an existing  
154        operation in this state. The application shall include, but not  
155        be limited to:

156        (a) The applicant's federal employer identification  
157        number, unemployment account number, and state sales tax  
158        registration number. If such numbers are not available at the  
159        time of application, they must be submitted to the office in  
160        writing prior to the disbursement of any payments under this  
161        section.

162        (b) The location in this state at which the project is  
163        located or is to be located.

164        (c) A description of the type of business activity,  
165        product, or research and development undertaken by the project,  
166        including six-digit North American Industry Classification  
167        System codes for all activities included in the project.

168        (d) The applicant's projected investment in the project.

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169        (e) The total investment, from all sources, in the  
170 project.

171        (f) The number of net new full-time equivalent jobs in  
172 this state the applicant anticipates having created as of  
173 December 31 of each year of the project and the average wage of  
174 such jobs.

175        (g) The total number of full-time equivalent employees  
176 currently employed by the applicant in this state and the number  
177 employed at the facility.

178        (h) The anticipated commencement date of the project.

179        (i) A detailed explanation of why the innovation incentive  
180 is needed to induce the applicant to expand or locate in the  
181 state and how the incentive will close or help close the  
182 competitive gap impeding the applicant's decision to locate or  
183 expand in this state.

184        (j) If applicable, an estimate of the proportion of the  
185 revenues resulting from the project that will be generated  
186 outside this state.

187        (5) REVIEW QUALIFICATIONS.--To qualify for review by the  
188 office, the applicant must, at a minimum, establish the  
189 following to the satisfaction of Enterprise Florida, Inc., and  
190 the office:

191        (a) The jobs proposed to be created under the application  
192 must pay an estimated annual average wage equaling at least 130  
193 percent of the average private sector wage in the area where the  
194 applicant is to be located or the statewide private sector  
195 average wage. The office may waive this average wage requirement  
196 at its discretion or at the request of Enterprise Florida, Inc.

197 The wage requirement may only be waived for a project located in  
198 a brownfield area designated under s. 376.80, in a rural city or  
199 rural county as defined in s. 288.106, or in an enterprise zone  
200 and only when the merits of the individual project or the  
201 specific circumstances in the community in relationship to the  
202 project warrant such action. If Enterprise Florida, Inc., makes  
203 such a recommendation, the recommendation must be transmitted in  
204 writing and the specific justification for the waiver  
205 recommendation must be explained. If the director elects to  
206 waive the wage requirement, the waiver must be stated in writing  
207 and the reasons for granting the waiver must be explained.

208 (b) For a research and development project:

209 1. The project must serve as a catalyst for an emerging or  
210 evolving technology cluster.

211 2. The project must demonstrate a plan for significant  
212 higher education collaboration.

213 3. The project must provide the state a break-even return  
214 on investment within a 20-year period.

215 4. The project must be provided with a one to one match  
216 from the local community. The match requirement may be reduced  
217 or waived in rural areas of critical economic concern or reduced  
218 in rural communities, brownfields, and enterprise zones within  
219 an urban county.

220 (c) For a innovation business project in this state, other  
221 than a research and development project:

222 1.a. The project must result in the creation of at least  
223 1,000 direct, new jobs at the business; or

224 b. If the project is located in a rural city or rural

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county as defined in s. 288.106, the project must result in the  
creation of at least 750 direct, new jobs.

2. The activity or product for the applicant's project  
must be within an industry or industries that have been  
designated as a target industry business under s. 288.106 or a  
high-impact sector under s. 288.108.

3.a. The cumulative investment in the project is at least  
\$500 million within a 3-year period; or

b. If the project is located in a rural city or rural city  
as defined in s. 288.106, or in an enterprise zone, the  
cumulative investment in the project must exceed \$375 million  
within a 3-year period.

(6) PROPOSAL EVALUATION AND RECOMMENDATIONS.--Enterprise  
Florida, Inc., shall evaluate individual proposals for  
innovation incentive projects and transmit to the office  
recommendations regarding the use of appropriated funds for such  
projects. Such evaluation and recommendation must include, but  
need not be limited to:

(a) A description of the type of operation, its required  
facilities, and the associated product, service, or research and  
development associated with the project.

(b) The number of full-time equivalent jobs that will be  
created by the project, the total estimated average annual wages  
of such jobs, and the types of business activities and jobs  
stimulated by the investment.

(c) The cumulative investment to be dedicated to the  
project within 3 years and the total investment expected in the  
project if more than 3 years.

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253        (d) The economic and fiscal impacts on the local and state  
254 economies relative to investment.

255        (e) A statement of any special impacts the project is  
256 expected to stimulate in a particular business sector in the  
257 state or regional economy or in the state's universities and  
258 community colleges.

259        (f) A statement of any anticipated or proposed  
260 relationships with state universities.

261        (g) A statement of the role the incentive is expected to  
262 play in the decision of the applicant to locate or expand in  
263 this state.

264        (h) A recommendation of the amount of the innovation  
265 incentive that is needed to close a competitive gap, including  
266 an explanation of why an incentive of that amount is needed to  
267 induce the applicant to expand or locate in this state.

268        (i) A discussion of the efforts and commitments made by  
269 the local community in which the project is to be located to  
270 induce the project location or expansion, taking into  
271 consideration local resources and abilities.

272        (j) A recommendation for specific performance criteria the  
273 applicant would be expected to achieve to receive any payments  
274 from the fund and penalties or sanctions for failure to meet or  
275 maintain performance conditions.

276        (k) For a research and development facility project:

277        1. A description of the extent to which the project has  
278 the potential to serve as catalyst for an emerging or evolving  
279 technology cluster.

280        2. The percentage of match provided for the project.

281       3. A description of the extent to which the project has or  
282       could have a long-term collaborative research and development  
283       relationship with a state university or community college.

284       4. A description of the existing or projected impact of  
285       the project on established technology clusters or targeted  
286       industry sectors.

287       5. A description of the project's contribution to the  
288       diversity and resiliency of the innovation economy of this  
289       state.

290       6. A description of the project's impact on special needs  
291       communities, including, but not limited to, rural areas,  
292       distressed urban areas, and enterprise zones.

293       (7) AWARD NEGOTIATION; CONSIDERATIONS.--The office, in  
294       consultation with Enterprise Florida, Inc., may negotiate the  
295       proposed amount of an award for any eligible applicant. In  
296       negotiating such award, the office shall consider the amount of  
297       the incentive needed to close the competitive gap in conjunction  
298       with other relevant applicant impact and cost information and  
299       analysis as described in this section. Particular emphasis shall  
300       be given to the potential for the project to stimulate  
301       additional private investment and high-quality employment  
302       opportunities in the area.

303       (8) AWARD APPROVAL OR DISAPPROVAL.--Upon receipt of the  
304       evaluation and recommendation from Enterprise Florida, Inc., the  
305       director shall recommend to the Governor approval or disapproval  
306       of a project. In recommending approval of a project, the  
307       director shall include proposed performance conditions that the  
308       project must meet to obtain incentive funds and any other

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309 conditions that must be met prior to the receipt of any  
310 incentive funds. The Governor shall consult with the President  
311 of the Senate and the Speaker of the House of Representatives  
312 before giving approval for a project. Upon approval of a  
313 project, the Executive Office of the Governor shall release the  
314 funds pursuant to the legislative consultation and review  
315 requirements set forth in 216.177.

316 (9) AWARD AGREEMENT.--Upon approval by the Governor and  
317 release of the funds as set forth in subsection (8), the  
318 director shall issue a letter certifying the applicant as a  
319 qualified innovation business. The office and the business shall  
320 enter into an agreement that sets forth the conditions for  
321 payment of incentives. The agreement must include the total  
322 amount of funds awarded; the performance conditions that must be  
323 met to obtain the award or portions of the award, including, but  
324 not limited to, net new employment in the state, average wage,  
325 and total investment; demonstration of a baseline of current  
326 service and a measure of enhanced capability; the methodology  
327 for validating performance; the schedule of payments; and  
328 sanctions for failure to meet performance conditions.

329 (10) INVESTMENT OF FUNDS.--Funds allocated to the  
330 Innovation Incentive Account shall be invested pursuant to s.  
331 17.57, and any interest earned on such investments shall be  
332 transferred from the Economic Development Trust Fund to the  
333 General Revenue Fund.

334 (11) PERFORMANCE VALIDATION; REPORT.--Enterprise Florida,  
335 Inc., shall assist the office in validating the qualified  
336 business's performance. At the conclusion of the innovation

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337 incentive award agreement, or its earlier termination,  
338 Enterprise Florida, Inc. shall, within 90 days, report the  
339 results of the innovation incentive award to the Governor, the  
340 President of the Senate, and the Speaker of the House of  
341 Representatives.

342 (12) ADDITIONAL USES OF INNOVATION INCENTIVE PROGRAM  
343 ALLOCATIONS.--The Governor may, in an emergency or special  
344 circumstance, and in consultation with the President of the  
345 Senate and the Speaker of the House of Representatives,  
346 reallocate unencumbered funds appropriated to the Innovation  
347 Incentive Program to supplement economic development programs  
348 and operations established by law. The Executive Office of the  
349 Governor shall recommend approval of the transfer and release of  
350 the funds pursuant to the legislative consultation and review  
351 requirements set forth in s. 216.177.

352 Section 2. Effective July 1, 2011, s. 288.1089, Florida  
353 Statutes, is repealed. Upon that date, any unobligated funds  
354 remaining in the Economic Development Trust Fund from the  
355 transfer made in section 3 of this act shall be transferred back  
356 to the General Revenue Fund. Notwithstanding the provisions of  
357 s. 216.301(1), Florida Statutes, and pursuant to s. 216.351,  
358 Florida Statutes, any funds remaining in the Innovation  
359 Incentive Account within the Economic Development Trust Fund  
360 that are obligated to a properly approved project under the  
361 Innovation Incentive Program, but that are only partially  
362 disbursed, shall remain in the Economic Development Trust Fund  
363 to be disbursed by the Office of Tourism, Trade, and Economic



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364 Development pursuant to the terms of the originally approved  
365 contract.

366       Section 3. For fiscal year 2006-2007, the sum of  
367 \$250,000,000 is transferred from the General Revenue Fund to the  
368 Innovation Incentive Account within the Economic Development  
369 Trust Fund to be used for the purposes of the Innovation  
370 Incentive Program under s. 288.1089, Florida Statutes. Funds  
371 transferred under this section are not subject to the service  
372 charge set forth in s. 215.20, Florida Statutes.

373       Section 4. Beginning in fiscal year 2006-2007 and annually  
374 for the next 4 fiscal years, the sum of \$50,000,000 is  
375 appropriated from the Innovation Incentive Account within the  
376 Economic Development Trust Fund to the Office of Tourism, Trade,  
377 and Economic Development to be used to implement the purposes of  
378 the Innovation Incentive Program. During any fiscal year to  
379 which this act applies, the Office of Tourism, Trade, and  
380 Economic Development may request additional budget authority as  
381 necessary to locate a new business in this state or to expand an  
382 existing business in this state so long as the request meets the  
383 purposes of the Innovation Incentive Program and is approved  
384 pursuant to s. 288.1089(8), Florida Statutes. However, under no  
385 circumstances shall the total funds used to implement the  
386 Innovation Incentive Program exceed the amount funded under  
387 section 3 of this act.

388       Section 5. Except as otherwise expressly provided in this  
389 act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1283**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade & Banking Committee

Representative(s) Attkisson offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 288.1089, Florida Statutes, is created to read:

288.1089 Innovation Incentive Program.--

(1) There is created an Innovation Incentive Program within the Governor's Office of Tourism, Trade, and Economic Development, which is intended to ensure that sufficient resources are available to allow the state to respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development and innovation business projects.

(2) As used in this section, the term:

(a) "Average wage" means the statewide average wage in the private sector or the average of all private-sector wages and salaries in the county or in the standard metropolitan area in which the project is located as determined by the Agency for Workforce Innovation.

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23        (b) "Cumulative investment" means the total private  
24 investment in buildings and equipment made by an applicant under  
25 a project approved pursuant to this section.

26        (c) "Director" means the director of the Office of  
27 Tourism, Trade, and Economic Development.

28        (d) "Innovation business" means a business expanding or  
29 locating in this state that is likely to serve as a catalyst for  
30 the growth of an existing or emerging technology cluster or will  
31 significantly impact the regional economy in which it is to  
32 expand or locate.

33        (e) "Fiscal year" means the state fiscal year.

34        (f) "Jobs" means full-time equivalent positions, as that  
35 term is consistent with terms used by the Agency for Workforce  
36 Innovation and the United States Department of Labor for  
37 purposes of unemployment compensation tax administration and  
38 employment estimation, resulting directly from a project in this  
39 state. The term does not include temporary construction jobs.

40        (g) "Match" means funding from local sources, public or  
41 private, which will be paid to the applicant and which is equal  
42 to 100 percent of the award. Eligible match funding may include  
43 any tax abatement granted to the applicant under s. 196.1995 or  
44 the appraised market value of land, buildings, infrastructure,  
45 or equipment conveyed or provided at a discount to the  
46 applicant. Complete documentation of match payment or other  
47 conveyance must be presented to and verified by the office  
48 before transfer of state funds to an applicant. An applicant may  
49 not provide, directly or indirectly, more than 5 percent of  
50 match funding in any fiscal year. The sources of such funding  
51 may not include, directly or indirectly, state funds  
52 appropriated from the General Revenue Fund or any state trust

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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53 fund, excluding tax revenues shared with local governments  
54 pursuant to law.

55 (h) "Office" means the Office of Tourism, Trade, and  
56 Economic Development.

57 (i) "Project" means the location to or expansion in this  
58 state by an innovation business or research and development  
59 applicant approved for an award pursuant to this section.

60 (j) "Research and development" means basic and applied  
61 research in the sciences or engineering, as well as the design,  
62 development, and testing, of prototypes or processes of new or  
63 improved products. Research and development does not include  
64 market research, routine consumer product testing, sales  
65 research, research in the social sciences or psychology,  
66 nontechnological activities, or technical services.

67 (k) "Research and development facility" means a facility  
68 that is predominately engaged in research and development  
69 activities. For purposes of this paragraph, the term  
70 "predominately" means at least 51 percent of the time.

71 (3) There is created an Innovation Incentive Account  
72 within the Economic Development Trust Fund created by s.  
73 288.095. Funds allocated in the Innovation Incentive account  
74 shall be invested in accordance with s. 17.57, and any interest  
75 earned thereon shall be transferred from the Economic  
76 Development Trust Fund to general revenue. The total amount of  
77 active innovation incentive awards may not exceed the balance  
78 remaining in the Innovation Incentive Account.

79 (4) To be eligible for consideration for an innovation  
80 incentive award, an innovation business or research and  
81 development entity must submit a written application to  
82 Enterprise Florida, Inc., before making a decision to locate new  
83 operations in this state or to expand an existing operation in

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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84 this state. The application must include, but need not be  
85 limited to:

86 (a) The applicant's federal employer identification  
87 number, unemployment account number, and state sales tax  
88 registration number. If these numbers are not available at the  
89 time of application, they must be submitted to the office in  
90 writing before the disbursement of any payments under this  
91 section.

92 (b) The location in this state at which the project is  
93 located or is to be located.

94 (c) A description of the type of business activity,  
95 product, or research and development to be undertaken by the  
96 applicant, including six-digit North American Industry  
97 Classification System codes for all activities included in the  
98 project.

99 (d) The applicant's projected investment in the project.

100 (e) The total investment, from all sources, in the  
101 project.

102 (f) The number of net new full-time equivalent jobs in  
103 this state the applicant anticipates having created as of  
104 December 31 of each year in the project and the average annual  
105 wage of those jobs.

106 (g) The total number of full-time equivalent employees  
107 currently employed by the applicant in this state, if  
108 applicable.

109 (h) The anticipated commencement date of the project.

110 (i) A detailed explanation of why the innovation incentive  
111 is needed to induce the applicant to expand or locate in the  
112 state and whether an award would cause the applicant to locate  
113 or expand in this state.

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114 (j) If applicable, an estimate of the proportion of the  
115 revenues resulting from the project which will be generated  
116 outside this state.

117 (5) To qualify for review by the office, the applicant  
118 must, at a minimum, establish the following to the satisfaction  
119 of Enterprise Florida, Inc., and the office:

120 (a) The jobs created by the project must pay an estimated  
121 annual average wage equaling at least 130 percent of the average  
122 private-sector wage in the area where the project is to be  
123 located or the average private sector wage in the state. The  
124 office may waive this average wage requirement at the request of  
125 Enterprise Florida, Inc., for a project located in a brownfield  
126 area designated under s. 376.80, in a rural city or county as  
127 defined in s. 288.106, or in an enterprise zone, when the merits  
128 of the individual project or the specific circumstances of the  
129 community in relationship to the project warrant such action. A  
130 recommendation for waiver by Enterprise Florida, Inc., must  
131 include a specific justification supporting the waiver and be  
132 transmitted in writing to the office. If the director elects to  
133 waive the wage requirement, the waiver must be stated in writing  
134 and the reasons for granting the waiver must be explained.

135 (b) A research and development project must:

136 1. Serve as a catalyst of an emerging or evolving cluster;  
137 2. Demonstrate a plan for significant higher education  
138 collaboration;

139 3. Provide the state, at a minimum, a break-even return on  
140 its investment within a 20-year period; and

141 4. Be provided with a one-to-one match from the local  
142 community. The match requirement may be reduced or waived in  
143 rural areas of critical economic concern or reduced in rural  
144 communities, brownfields, and enterprise zones.

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145 (c) An innovation business project, other than a research  
146 and development project, must:

147 1.a. Result in the creation of at least 1,000 direct, new  
148 jobs at the business; or

149 b. Result in the creation of at least 750 direct, new jobs  
150 if the project is located in a rural county or city as defined  
151 in s. 288.106 or in an enterprise zone.

152 2. Have an activity or product that is within an industry  
153 that is designated as a target industry business under s.  
154 288.106 or a designated sector under s. 288.108.

155 3.a. Have a cumulative investment of at least \$500 million  
156 within a 3-year period; or

157 b. Have a cumulative investment that exceeds \$375 million  
158 within a 3-year period if the project is located in a rural  
159 county or city, as defined in s. 288.106, or in an enterprise  
160 zone.

161 (6) Enterprise Florida, Inc., shall evaluate proposals for  
162 innovation incentive awards and forward recommendations for  
163 awards to the office. Such evaluation and recommendation must  
164 include, but need not be limited to:

165 (a) A description of the project, its required facilities,  
166 and the product, service, or research and development associated  
167 with the project.

168 (b) The number of full-time equivalent jobs that will be  
169 created by the project, the total estimated average annual wages  
170 of those jobs, and the types of business activities and jobs  
171 likely to be stimulated by the project.

172 (c) The cumulative investment to be dedicated to the  
173 project within 3 years and the total investment expected in the  
174 project if more than 3 years.

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175       (d) The projected economic and fiscal impacts on the local  
176 and state economies relative to investment.

177       (e) A statement of any special impacts the project is  
178 expected to produce in a particular business sector in the state  
179 or regional economy or in the state's universities and community  
180 colleges.

181       (f) A statement of any anticipated or proposed  
182 relationships with state universities.

183       (g) A statement of the role the incentive is expected to  
184 play in the decision of the applicant to locate or expand in  
185 this state.

186       (h) A recommendation and explanation of the amount of the  
187 award needed to cause the applicant to expand or locate in this  
188 state.

189       (i) A discussion of the efforts and commitments made by  
190 the local community in which the project is to be located to  
191 induce the applicant's location or expansion in light of local  
192 resources and abilities.

193       (j) A recommendation for specific performance criteria the  
194 applicant would be expected to achieve in order to receive  
195 payments from the fund and penalties or sanctions for failure to  
196 meet or maintain performance conditions.

197       (k) For a research and development facility, an evaluation  
198 and recommendation must include:

199       1. A description of the extent to which the project has  
200 the potential to serve as catalyst for an emerging or evolving  
201 cluster;

202       2. The percentage of match provided for the project;

203       3. A description of the extent to which the project has or  
204 could have a long-term collaborative research and development



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relationship with one or more universities or community colleges  
in this state;

4. A description of the existing or projected impact of  
the project on established clusters or targeted industry  
sectors;

5. A description of the project's contribution to the  
diversity and resiliency of this state's innovation economy; and

6. A description of the project's impact on special-needs  
communities, including, but not limited to, rural areas,  
distressed urban areas, and enterprise zones.

(7) The office may, in consultation with Enterprise  
Florida, Inc., negotiate the proposed amount of an award for any  
applicant meeting the requirements of this section. In  
negotiating such award, the office shall consider the amount of  
the incentive needed to cause the applicant to locate or expand  
in this state in conjunction with other relevant applicant  
impact and cost information and analysis as outlined in this  
section. Particular emphasis shall be given to the potential for  
the project to stimulate additional private investment and high-  
quality employment opportunities in the state.

(8) Upon receipt of the evaluation and recommendation from  
Enterprise Florida, Inc., the director shall recommend the  
approval or disapproval of an award to the Governor. In  
recommending approval of an award, the director shall include  
proposed performance conditions that the applicant must meet in  
order to obtain incentive funds and any other conditions that  
must be met before the receipt of any incentive funds. The  
Governor shall consult with the President of the Senate and the  
Speaker of the House of Representatives before giving approval  
for an award. Upon approval of an award, the Executive Office of

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the Governor shall release the funds pursuant to the legislative consultation and review requirements set forth in s. 216.177.

(9) Upon approval by the Governor and release of the funds as set forth in subsection (8), the director shall issue a letter certifying the applicant as qualified for an award. The office and the applicant shall enter into an agreement that sets forth the conditions for payment of incentives. The agreement must include the total amount of funds awarded; the performance conditions that must be met to obtain the award or portions of the award, including, but not limited to, net new employment in the state, average wage, and total investment; demonstration of a baseline of current service and a measure of enhanced capability; the methodology for validating performance; the schedule of payments; and sanctions for failure to meet performance conditions.

(10) Enterprise Florida, Inc., shall assist the office in validating the performance of an innovation business or research and development facility that has received an award. At the conclusion of the innovation incentive award agreement, or its earlier termination, Enterprise Florida, Inc., shall, within 90 days, report the results of the innovation incentive award to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. For fiscal year 2006-07, \$250,000,000 is hereby appropriated from nonrecurring general revenue to the Governor's Office of Tourism, Trade, and Economic Development. Notwithstanding s. 216.301 and pursuant to s. 216.351, any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-11 fiscal year. At the end of the 2010-11 fiscal year, any obligated funds for qualified projects that are not yet disbursed shall

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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remain to be used for the purposes of this act. Any unobligated funds of this appropriation shall revert to the unallocated general revenue fund at the end of the 2010-11 fiscal year.

Section 3. New subsection (16) of s. 403.973, Florida Statutes, is created, and present subsections (16) through (19) are renumbered as subsections (17) through (20).

(16) The office, working with the agencies participating in the memoranda of agreement, shall review sites proposed for the location of facilities eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days of the request for the review by the office, the agencies will provide to the office a statement as to each site's necessary permits under local, state and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

Section 5. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to the innovation incentives; creating s. 288.1089, F.S.; creating the Innovation Incentive Program within the Office of Tourism, Trade, and Economic Development for certain purposes; providing definitions; providing an incentive-award limitation; providing for award application and eligibility; providing qualification requirements; providing proposal evaluation and recommendations requirements for Enterprise Florida, Inc.; providing for negotiation of award amounts by the office; providing for agreements for payments of certain moneys

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297       under certain circumstances; providing criteria for award  
298       approval or disapproval; providing for incentive payment  
299       agreements; requiring Enterprise Florida, Inc., to assist  
300       the office in validating certain business performances;  
301       requiring a report to the Governor and Legislature;  
302       authorizing the office to allocate certain funds for  
303       certain purposes; providing appropriations; effectuating a  
304       fund transfer; providing for future expiration of the act;  
305       amending s. 403.973, F.S.; providing for review of  
306       possible sites for projects funded under s. 288.1089;  
307       providing an effective date.  
308



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1285

Public Records Exemptions

**SPONSOR(S):** Attkisson

**TIED BILLS:** HB 1283

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u></u>	<u>Carlson</u>	<u>Carlson</u> <u>MWC</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Current law provides an exemption from public records law for certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses.

The bill will expand the existing exemption to include specific information relating to the an "Innovation Incentive Program." The bill expands the existing exemption, provides for future review and repeal of the exemption, provides a statement of public necessity and provides a contingent effective date.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Limited Government - The bill will reduce access to public records.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Present Situation:**

Section 288.1067, F.S., provides that certain information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to incentive programs for qualified businesses<sup>1</sup> is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The information so exempted includes:

- An employer's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number;
- Trade secret information as defined in s. 812.081, F.S.;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

##### **Effect of Proposed Changes:**

The bill expands the public records exemption provided in s. 288.1067, F.S., to include information held by the Office of Tourism, Trade and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities and their employees or agents pursuant to s. 288.1089, F.S., the "Innovation Incentive Program" created by HB 1283.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement and provides an effective date contingent on the passage of HB 1283 or similar legislation.

#### **C. SECTION DIRECTORY:**

Section 1. Amends s. 288.1067, F.S., to expand the existing public records exemption to include information held pursuant to the Innovation Incentive Program under s. 288.1089, F.S.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1283 or similar legislation.

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<sup>1</sup> The incentive programs are the Capital Investment Tax Credit Program (s. 220.191), Qualified Defense Contractor Tax Refund Program (s. 288.1045), Qualified Target Industry Tax Refund Program (s. 288.106), High Impact Performance Grant Program (s. 288.108) and the Quick Action Closing Fund (s. 288.1088).

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

#### **2. Other:**

##### Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

##### Public Necessity Statement



Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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2006

A bill to be entitled

An act relating to public records exemptions; amending s. 288.1067, F.S.; expanding the public records exemption for incentive programs to include the Innovation Incentive Program under s. 288.1089, F.S.; providing for future review and repeal; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (4) of section 288.1067, Florida Statutes, are amended to read:

288.1067 Confidentiality of records.--

(1) The following information held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities, and their employees or agents, pursuant to the incentive programs for qualified businesses as provided in s. 220.191, s. 288.1045, s. 288.106, s. 288.108, ~~or~~ s. 288.1088, or s. 288.1089 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, for a period not to exceed the duration of the relevant tax refund, tax credit, or incentive agreement:

(a) The business's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number.

(b) Any trade secret information as defined in s. 812.081. Notwithstanding any provision of this section, trade secret

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information shall continue to be confidential and exempt after the duration of the tax refund, tax credit, or incentive agreement.

(c) The percentage of the business's sales occurring outside this state and, for businesses applying under s. 288.1045, the percentage of the business's gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business's application is submitted.

(d) The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.

(e) The average wage actually paid by the business for those jobs created by the project and any detailed proprietary business information or an employee's personal identifying information, held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.

(f) Any proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by the Office of Tourism, Trade, and Economic Development as evidence of the achievement or nonachievement of the investment requirements for the tax credit certification under s. 220.191, for the high-impact performance agreement under s. 288.108, ~~or~~ for the Quick Action Closing Fund agreement under s. 288.1088, or for the Innovation Incentive Program agreement under s. 288.1089.

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(g) The amount of:

1. Taxes on sales, use, and other transactions paid pursuant to chapter 212;
2. Corporate income taxes paid pursuant to chapter 220;
3. Intangible personal property taxes paid pursuant to chapter 199;
4. Emergency excise taxes paid pursuant to chapter 221;
5. Insurance premium taxes paid pursuant to chapter 624;
6. Excise taxes paid on documents pursuant to chapter 201;

or

7. Ad valorem taxes paid, as defined in s. 220.03(1),

which the qualified business reports on its application for certification or reports during the term of the tax refund agreement, and for which the qualified business claims a tax refund under s. 288.1045 or s. 288.106, and any such information held as evidence of the achievement or nonachievement of performance items contained in the tax refund agreement.

(4) This section is subject to the Open Government Sunset Review Act ~~of 1995~~ in accordance with s. 119.15 and shall stand repealed on October 2, 2011 ~~2007~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to provide confidentiality for certain information concerning businesses that is obtained through the administration of the Innovation Incentive Program for qualified innovation businesses under s. 288.1089, Florida Statutes. The disclosure of information such as trade secrets, tax

85 identification numbers, analyses of gross receipts, the amount  
86 of taxes paid, the amount of capital investment, and the amount  
87 of employee wages paid, and the detailed documentation to  
88 substantiate such performance information, could injure a  
89 business in the marketplace by providing its competitors with  
90 detailed insights into the financial status and the strategic  
91 plans of the business, thereby diminishing the advantage that  
92 the business maintains over those that do not possess such  
93 information. Some of the documentation supplied to support a  
94 business's incentive claims could reveal private information,  
95 such as employee names and social security numbers, concerning  
96 that business's employees. Without this exemption, private  
97 sector businesses, whose records generally are not required to  
98 be open to the public, might refrain from participating in the  
99 economic development program and thus would not be able to use  
100 the incentives available under the program. If a business were  
101 unable to use the incentives, the business might choose to  
102 locate its employment and other investment activities outside  
103 the state, depriving the state and the public of the potential  
104 economic benefits associated with such business activities in  
105 this state. The harm to businesses in the marketplace and to the  
106 effective administration of the economic development program  
107 caused by the public disclosure of such information far  
108 outweighs the public benefits derived from its release. In  
109 addition, because the confidentiality provided by s. 288.1067,  
110 Florida Statutes, does not preclude the reporting of statistics  
111 in the aggregate concerning the program, as well as the names of  
112 businesses participating in the program and the amount of

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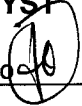

113    incentives awarded and claimed, the public has access to  
114    information important to an assessment of the performance of the  
115    program.

116            Section 3. This act shall take effect July 1, 2006, if  
117    House Bill 1283 or similar legislation is adopted in the same  
118    legislative session or an extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1467      Capital Formation  
**SPONSOR(S):** Grant and others  
**TIED BILLS:** HB 1469      **IDEN./SIM. BILLS:** SB 2668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>		Olmedillo 	Carlson 
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>			
3) <u>Commerce Council</u>			
4) _____			
5) _____			

### SUMMARY ANALYSIS

This bill creates the Florida Capital Formation Act (Act), which is designed to increase the amount of venture capital investment in Florida.

The bill creates the following:

- **Florida Capital Investment Trust**, a state beneficiary public trust to hold contingent tax credits as a guarantee for investments made under the Act. Tax credits may only reduce tax liabilities for sales and use tax, corporate income tax, insurance premium tax and tax on wet marine and transportation insurance.
- **The Florida Opportunity Fund Management Corporation**, a non-profit corporation, which will organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager and manage the business affairs of the Florida Opportunity Fund.
- **The Florida Opportunity Fund**, which shall invest on a funds-of-funds basis emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.

The bill appropriates \$750,000, for fiscal year 2006-2007 from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities. The bill also reserves \$75 million in tax credits as a guarantee of investments made under the Act.

This bill provides an effective date of July 1, 2006.



## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Limited Government -- The bill creates the Florida Capital Investment Trust, the Florida Opportunity Fund Management Corporation, and the Florida Opportunity Fund. The bill provides the Department of Revenue (DOR) rule making authority to implement provisions of this Act.

The bill appropriates \$750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Present Situation:**

##### **THE VENTURE CAPITAL INDUSTRY--AN OVERVIEW**

Venture capital is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.<sup>1</sup>

Venture capitalists generally:

- Finance new and rapidly growing companies;
- Purchase equity securities;
- Assist in the development of new products or services;
- Add value to the company through active participation;
- Take higher risks with the expectation of higher rewards;
- Have a long-term orientation<sup>2</sup>

Venture capitalists actively work with the company's management by contributing their experience and business savvy gained from helping other companies with similar growth challenges.

Venture capitalists mitigate the risk of venture investing by developing a portfolio of young companies in a single venture fund.

A venture capitalist may invest before there is a real product or company organized (so called "seed investing"), or may provide capital to a company in its first or second stages of development known as "early stage investing."

Some organizations may include government affiliated investment programs that help startup companies either through state, local or federal programs. One common vehicle is the Small Business Investment Company or SBIC program administered by the Small Business Administration, in which a venture capital firm may augment its own funds with federal funds and leverage its investment in qualified investee companies.

##### **Term of Investment**

Depending on the investment focus and strategy of the venture firm, it will seek to exit the investment in the portfolio company within three to five years of the initial investment. While the initial public offering

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<sup>1</sup> Available at <http://www.nvca.org/def.html>, last viewed March 27, 2006.

<sup>2</sup> Id.

may be the most glamorous and heralded type of exit for the venture capitalist and owners of the company, most successful exits of venture investments occur through a merger or acquisition of the company by either the original founders or another company.

### Management Fees

As an investment manager, the general partner will typically charge a management fee to cover the costs of managing the committed capital.

### **STATE VENTURE CAPITAL IN FLORIDA**

Venture capital refers to the early-stage financing of new companies with high growth potential. Venture capital investments typically have several characteristics, including an investment in a start-up or expansion-oriented company that has a higher level of risk than is typically associated with traditional bank lending activities; equity participation in the business by the venture capitalist; long-term investments with a 5- to 10-year time horizon; and an established mechanism for the payout of the venture capitalist at the end of that time period.<sup>3</sup>

Enterprise Florida, Inc. (EFI) reports that in Florida, total venture capital spending was more than \$555 million for 114 deals in 2003 and 2004.<sup>4</sup> The EFI website lists 27 venture capital firms that have headquarters in Florida.<sup>5</sup>

EFI also reports that since the late 1990's, venture capital investment in Florida has fallen sharply both in absolute dollar terms and as a share of the U.S. total. Despite being the 4th most populous state, Florida ranks 13th in the U.S. in terms of venture capital investment in 2004. In 2004 Florida accounted for only \$300 million, or 1.42% of the total venture capital funding in the U.S.<sup>6</sup>

### **State Investments in Venture Capital**

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry.<sup>7</sup> These programs include:

- Government-funded and managed venture capital funds (VCFs);
- Requiring public-sector pension funds to make venture capital investments (either directly or through VCFs);
- Tax credits for private investment in VCFs; and
- Government investment or government-guaranteed investment in private VCFs.<sup>8</sup>

### **Effects of Proposed Changes:**

This bill creates the Florida Capital Formation Act (Act), and provides legislative findings and intent relating to the Act.

### **Definitions**

The bill provides the following definitions:

- "Board" means the board of trustees of the Florida Capital Investment Trust.
- "Certificate" means a contract between the trust and a designated investor evidencing the terms of a guarantee or incentive granted to a designated investor.

<sup>3</sup> OPPAGA Report on the Cypress Equity Fund, Report No. 98-33. For more information, see the National Venture Capital Association (NVCA) website at <http://www.nvca.org/def.html>. The NVCA is a trade association that represents the U.S. venture capital industry. It is a member-based organization, which consists of venture capital firms that manage pools of risk equity capital designated to be invested in high growth companies.

<sup>4</sup> <http://www.eflorida.com/businessadvantages/1/venturecapital.asp?level1=29&level2=159>

<sup>5</sup> Id.

<sup>6</sup> Enterprise Florida, Inc.

<sup>7</sup> EFI reports that 39 states have adopted programs to deliver or facilitate the formation of local seed and venture capital resources. Id. at 3.

<sup>8</sup> See Daniel Sandler, *State Venture Capital Programs*, and *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

- "Corporation" means the Florida Opportunity Fund Management Corporation created under the bill.
- "Designated investor" means a person, other than the board, who purchases an equity interest in the Florida Opportunity Fund or is a party to a certificate or who is a lender to the Florida Opportunity Fund and is a party to a certificate.
- "Florida Capital Investment Trust" or "trust" means a state beneficiary public trust created under the bill.
- "Florida Opportunity Fund" or "fund" means the private, for-profit limited partnership or limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.
- "Tax credit" means a contingent tax credit issued to offset tax liabilities imposed by this state, provided the proceeds of such tax are payable to the General Revenue Fund. A tax credit is not eligible to offset tax liabilities imposed by a political subdivision within this state.

### **Florida Capital Investment Trust**

This bill creates the Florida Capital Investment Trust (Trust) as a state beneficiary public trust.

The bill creates a board of trustees (Board of Trustees) as follows:

- Five voting trustees and two nonvoting ex officio trustees.
  - Three voting trustees appointed by the Governor.
  - One voting trustee appointed by the President of the Senate.
  - One voting trustee appointed by the Speaker of the House of Representatives.
  - One nonvoting ex officio trustee shall be the designee of Enterprise Florida, Inc., and serve at its pleasure.
  - One nonvoting ex officio trustee shall be the designee of the Florida Research Consortium and serve at its pleasure.

The bill establishes that the exercise of the powers of the Board of Trustees is deemed to be the performance of essential public purposes.

The Governor shall appoint one trustee to a term ending April 30, 2007 and two trustees ending April 30, 2009. The Senate and the House shall each appoint trustees to terms ending April 30, 2008. Thereafter, each voting trustee shall be appointed for a 3-year term. Ex officio trustees serve annual terms and may be reappointed. A trustee's term ends on April 30 of his or her term expiration year. Trustees whose terms have expired may continue to serve until their replacements have been duly appointed and vacancies shall be filled in the same manner as original appointments.

Trustees must be selected based upon expertise and competence in the supervision of early stage investment managers, the fiduciary management of funds, the administration and management of a publicly listed company, or experience and competence in public accounting, auditing, and fiduciary responsibilities. The trustees will serve without compensation in the form of fees, per diem, or salary. Trustees may receive compensation or reimbursement for direct expenses, mileage, and other travel expenses related to the performance of their duties, pursuant to s. 112.061, F.S. Trustees may not have an interest in any entity to which a certificate is issued.

### **Powers and Limitations**

The bill grants the Board of Trustees broad powers to carry out its purpose under the Act, including engaging consultants, expending funds, investing funds, contracting, bonding or insuring against loss, providing guarantees or other incentives, holding transferable tax credits, selling tax credits, or entering into any financial or other transaction.

In the event the Board of Trustees elects to hire employees, the bill requires such employees to be selected based on their knowledge and leadership in the field for which the person performs services for the Board of Trustees.

The bill requires the Board of Trustees, in conjunction with Department of Revenue (DOR) to develop a system for registration of tax credits received and transferred by the Trust. In addition, the Board of Trustees shall develop a documentation system to verify that claimed tax credits are valid.

The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation.

The Board of Trustees meetings shall be subject to the provisions of s. 286.011, F.S., requiring all meetings at which official acts are to be taken to be public at all times and requiring the Board of Trustees to provide reasonable notice of all such meetings. Nevertheless, the bill provides that information on securities acquired and held by the Florida Opportunity Fund shall be maintained in confidence. **This appears to be a public records exemption. Please see Drafting Issues or Other Comments.**

#### Issuance of Credits

The bill authorizes the issuance and transfer of credits to the Trust in the amount of \$75 million. However, the bill limits the transfer of tax credits to \$20 million for use in any single state fiscal year.

The Board of Trustees may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the Board of Trustees and such tax credits may only be transferred in increments of \$100,000. Once the Board of Trustees transfers any tax credit, it shall immediately notify, in writing, the Governor, the President of the Senate, the Speaker of the House of Representatives and DOR. The Board of Trustees shall also be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, of such transfers.

Tax credits may only serve to reduce tax liabilities imposed by chapter 212 (Sales and Use Tax), chapter 220 (Corporate Income Tax), s. 624.509 (insurance premiums taxes), or s. 624.510 (Tax on wet marine and transportation insurance). The bill specifies that an insurance company claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit.

Any original sale of tax credits by the board shall be by competitive bidding unless the sale is for the full face value of the credits. The use of transferred tax credits may not occur prior to July 1, 2011 or after July 1, 2036.

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

#### **Florida Opportunity Fund Management Corporation**

At the request of the Board of Trustees, Enterprise Florida, Inc. shall facilitate the creation of the Florida Opportunity Fund Management Corporation (Fund Corporation), as a private not-for-profit corporation. Enterprise Florida, Inc. shall be the Fund Corporation's sole member. The bill provides that the Fund Corporation is not a public corporation or an instrumentality of the state. The Fund Corporation shall have all powers granted under its organizational documents and shall indemnify directors to the broadest extent permissible under the laws of Florida.

#### Board of Directors

Enterprise Florida, Inc.'s vice chair shall select from its board of directors a five person-appointment committee (Committee). The Committee shall select five initial members to the board of directors (Board of Directors) for the Fund Corporation.

The initial members of the Board of Directors shall include persons who have expertise in the areas of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as deemed appropriate by the Committee. Members of the Board of Directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the Fund Corporation pursuant to this Act or in any investment made by the Florida Opportunity Fund.

The Board of Directors shall be compensated for direct expenses and mileage pursuant to s. 112.061 but shall not receive a fee or salary for service as directors. The Fund Corporation serves as a general partner or manager of the Fund and may charge a management fee on assets under management in the Fund, only to pay for reasonable and necessary costs.

#### Purpose

The purposes of the Fund Corporation shall be to organize and manage the Florida Opportunity Fund.

The Fund Corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Fund Corporation. Proposals shall address the following in relation to the applicant:

- The level of experience;
- The quality of management;
- The investment philosophy and process;
- The probability of success in fundraising;
- The prior investment fund results; and
- A plan for achieving the purposes of the bill.

The Fund Corporation shall only select a manager with expertise in the management and fund allocation of investment in venture capital funds.

#### **The Florida Opportunity Fund**

The bill directs the Fund Corporation to create the Florida Opportunity Fund (Fund), upon request by the Board of Trustees, to be organized and incorporated as a for-profit limited liability partnership or limited liability corporation under the laws of Florida. The Board of Trustees, the Fund Corporation or the Fund may contract with Enterprise Florida, Inc. for provision of services necessary for continuing operations.

The Fund shall invest on a funds-of-funds basis and emphasize investment in seed capital and early stage venture capital funds focusing on opportunities in Florida. While not precluded from investing in funds with a wider geographic spread of portfolio investment, the Fund shall require an investment fund to have a record of investment in Florida, be based in Florida, or have an office in Florida staffed with a full-time, professional venture investment executive to be eligible for investment.

The investments by the Fund shall be on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Fund shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of early stage venture capital funds. The Fund may invest in newly created early stage venture capital funds as long as the manager or management teams of the funds have experience, expertise, and a successful history in the investment of venture capital funds. The Fund may not invest in a fund unless that fund has raised capital from other sources in an amount greater than the investment of the Fund. The Fund Corporation and its partners or shareholders may negotiate any and all terms and conditions for its investments, including draw back of management fees and other provisions that maximize investment in seed and early stage companies based in Florida.

Investments by designated investors in the Fund shall be deemed permissible investments for state-chartered banks and for domestic insurance companies under applicable state law.

If the fund is liquidated or has returned all capital to designated investors in accordance with contractual agreements, or the guarantee capacity of the trust, at the sole discretion of the board, is sufficient for additional certificates, new funding of the Florida Opportunity Fund may be implemented for subsequent venture capital fund-of-funds investments. If the board takes exception to an additional funding, such additional funding may only be implemented without the benefit of certificates from the board.

#### Fees

The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation. The bill also authorizes the Fund Corporation to charge a management fee on assets under management in the Fund. In addition, Managers may charge a management fee to the Fund.

#### Annual Report

The bill requires that the Board of Trustees provide an annual report on the activities conducted by the Fund to the Governor, the President of the Senate and the Speaker of the House of Representatives. The report shall include the following:

- A copy of the independent audit of the Fund;
- A valuation of the assets of the Fund;
- A review of the progress of the Manager in implementing the fund's investment plan;
- The benefits to the state resulting from this program;
- The number of businesses created and their associated industry;
- The number of jobs created; and
- A description of any sale of tax certificates and any sale of tax certificates that is reasonably anticipated by the Board of Trustees to meet its certificate obligations.

The bill provides that DOR may share information relative to tax credits claimed under this Act to the Board of Trustees of the Trust in the conduct of the Trust's official business.

The bill includes tax credits transferred or sold within the priority list of applied credits against certain taxes and within the order of taking credits or deductions against the insurance premium tax.

#### **Appropriations**

The bill appropriates \$750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

#### **C. SECTION DIRECTORY:**

Section 1. Creates Part X of chapter 288, including ss. 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626, 288.9627 and 288.9628, F.S., relating to the Capital Formation Act.

Section 2. Amends s. 213.053, F.S., to authorize the Department of Revenue to provide tax credit information to the Board of Trustees of the Florida Capital Investment Trust.

Section 3. Amends s. 220.02, F.S., to include tax credits in a list of credits and in a priority order.

Section 4. Amends s. 624.509, F.S., to include tax credits in a priority order of credits and deductions against premium tax.

Section 5. Provides an appropriation.

Section 6. Provides an effective date of July1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill authorizes the transfer of up to \$20 million per year of contingent tax credits as a guarantee for investments made under the Act. The total value of credits that may be claimed is \$75 million. This may result in a reduction of state revenues of up to \$20 million per year if transferees claim such credits.

#### **2. Expenditures:**

The bill appropriates \$750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

#### **2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Subsection (2) of new s. 288.9625, F.S. provides that the board may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the "board". This language may conflict with the power of the Fund Corporation, not the Board of Trustees, to enter into certificate obligations. As a result, it appears that, although the Fund Corporation may enter into contracts for certificate obligations with Managers, it does not have the power to grant tax credits to that Manager.

Also, this subsection states that the Board of Trustees shall be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, or such transfers. The transfer of tax credits appears to be only under the authority of the Trust, hence, this language conflicts with such authority.

Subsection (6) of new s. 288.9624 appears to create a public records exemption for information on securities held by the Florida Opportunity Fund. A public records exemption must be created pursuant to s. 24(c), Art. I of the State Constitution in a separate bill.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



HB 1467

2006

A bill to be entitled

An act relating to capital formation; creating a new pt. X of ch. 288, F.S.; providing a short title; providing legislative findings and intent; providing definitions; creating the Florida Capital Investment Trust as a state beneficiary public trust; providing for administration by a board of trustees; providing for appointment of board members; providing for terms; providing for serving without compensation; providing for travel and other direct expenses; providing criteria for trustees; providing for powers and duties of trustees; providing for hiring employees; providing for meetings of the board; authorizing the trust to receive, hold, use, transfer, and sell certain tax credits for certain purposes; providing requirements and limitations; authorizing the Department of Revenue to adopt rules for certain purposes; requiring Enterprise Florida, Inc., to facilitate establishment of the Florida Opportunity Fund Management Corporation; specifying criteria of the corporation; providing for appointment of a board of directors selection committee; providing for selection of a board of directors of the corporation by Enterprise Florida, Inc.; specifying criteria; providing for terms and requirements of directors; providing purposes of the corporation; providing duties and responsibilities of the corporation; authorizing the corporation to charge a management fee for certain purposes; providing for travel and other direct expenses; providing for powers of the corporation;

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CODING: Words stricken are deletions; words underlined are additions.

hb1467-00

29 creating the Florida Opportunity Fund as a for-profit,  
30 limited partnership or a limited liability corporation to  
31 be organized and incorporated by the Florida Opportunity  
32 Fund Management Corporation; authorizing certain entities  
33 to contract with Enterprise Florida, Inc., for certain  
34 purposes; providing investment requirements for the fund;  
35 requiring the board of trustees to issue annual reports on  
36 activities of the fund; providing report requirements;  
37 amending s. 213.053, F.S.; authorizing the Department of  
38 Revenue to provide certain tax credit information to the  
39 board of trustees; amending s. 220.02, F.S.; including tax  
40 credits transferred or sold by the board of trustees  
41 within the priority list of applied credits against  
42 certain taxes; amending s. 624.509, F.S.; including tax  
43 credits transferred or sold by the board of trustees  
44 within the order of taking credits or deductions against  
45 the insurance premium tax; providing an appropriation;  
46 providing an effective date.

47  
48 Be It Enacted by the Legislature of the State of Florida:  
49

50 Section 1. Parts X and XI of chapter 288, Florida  
51 Statutes, are redesignated as parts XI and XII, respectively,  
52 and a new part X of that chapter, consisting of sections  
53 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626,  
54 288.9627, and 288.9628, is created to read:

55 288.9621 Short title.--This part may be cited as the  
56 "Florida Capital Formation Act."

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57        288.9622 Findings and intent.--

58        (1) The Legislature finds and declares that there is need  
59 to increase the availability of seed capital and early stage  
60 venture equity capital for emerging companies in the state,  
61 including, without limitation, enterprises in life sciences,  
62 information technology, advanced manufacturing processes,  
63 aviation and aerospace, and homeland security and defense, as  
64 well as other strategic technologies.

65        (2) It is the intent of the Legislature that this part  
66 serve to mobilize private investment in a broad variety of  
67 venture capital partnerships in diversified industries and  
68 geographies; retain private-sector investment criteria focused  
69 on rate of return; use the services of highly qualified managers  
70 in the venture capital industry regardless of location;  
71 facilitate the organization of the Florida Opportunity Fund as a  
72 fund-of-funds investor in seed and early stage venture capital  
73 and angel funds; and precipitate capital investment and  
74 extensions of credit to and in the Florida Opportunity Fund.

75        (3) It is the intent of the Legislature to mobilize  
76 venture equity capital for investment in such a manner as to  
77 result in a significant potential to create new businesses and  
78 jobs in this state that are based on high growth potential  
79 technologies, products, or services and that will further  
80 diversify the economy of this state.

81        288.9623 Definitions.--As used in this part:

82        (1) "Board" means the board of trustees of the Florida  
83 Capital Investment Trust.

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(2) "Certificate" means a contract between the trust and a designated investor evidencing the terms of a guarantee or incentive granted to a designated investor.

(3) "Corporation" means the Florida Opportunity Fund Management Corporation created under this part.

(4) "Designated investor" means a person, other than the board, who purchases an equity interest in the Florida Opportunity Fund or is a party to a certificate or who is a lender to the Florida Opportunity Fund and is a party to a certificate.

(5) "Florida Capital Investment Trust" or "trust" means a state beneficiary public trust created under this part.

(6) "Florida Opportunity Fund" or "fund" means the private, for-profit limited partnership or limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.

(7) "Tax credit" means a contingent tax credit issued under this part or subsequent legislative action that is available to offset tax liabilities imposed by this state, provided the proceeds of such tax are payable to the General Revenue Fund. A tax credit is not eligible to offset tax liabilities imposed by a political subdivision within this state.

288.9624 Florida Capital Investment Trust.--

(1) The Florida Capital Investment Trust is created as a state beneficiary public trust to be administered by the board. The exercise by the board of powers conferred by this part is

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111 deemed and held to be the performance of essential public  
112 purposes.

113       (2) (a)   The board shall consist of five voting trustees and  
114 two nonvoting ex officio trustees. A majority of voting trustees  
115 shall constitute a quorum.

116       (b)   Three voting trustees shall be appointed by the  
117 Governor; one voting trustee shall be appointed by the President  
118 of the Senate; and one voting trustee shall be appointed by the  
119 Speaker of the House of Representatives. The Governor shall  
120 appoint one trustee to a term ending April 30, 2007, and two  
121 trustees to terms ending April 30, 2009. The President of the  
122 Senate and the Speaker of the House of Representatives shall  
123 each appoint trustees to terms ending April 30, 2008.  
124 Thereafter, each voting trustee shall be appointed for a 3-year  
125 term.

126       (c)   One nonvoting ex officio trustee shall be the designee  
127 of Enterprise Florida, Inc., and one nonvoting ex officio  
128 trustee shall be the designee of the Florida Research  
129 Consortium. Ex officio trustees serve annual terms at the  
130 pleasure of their appointing organizations and may be  
131 reappointed. A trustee's term shall end on April 30 of his or  
132 her term expiration year. Trustees whose terms have expired may  
133 continue to serve until their replacements have been duly  
134 appointed.

135       (d)   Vacancies shall be filled in the same manner as the  
136 appointment of the original trustee to whom a successor is  
137 sought.

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(3) Trustees shall serve on the board without compensation in the form of fees, per diem, or salary. Trustees may receive compensation or reimbursement for direct expenses, mileage, and other travel expenses related to the performance of their duties pursuant to s. 112.061. Trustees shall be selected based upon demonstrated expertise and competence in the supervision of early stage investment managers, the fiduciary management of funds, the administration and management of a publicly listed company, or experience and competence in public accounting, auditing, and fiduciary responsibilities. Trustees may not have an interest in any entity to which a certificate is issued.

(4) The board may engage consultants, expend funds, invest funds, contract, bond or insure against loss, provide guarantees or other incentives, hold transferable tax credits, sell tax credits, or enter into any financial or other transaction or perform any other act necessary to carry out its purpose under this part. The board, in conjunction with the Department of Revenue, shall develop a system for registration of any tax credits received by the trust and transferred under this part. The board shall also create a system of documentation that permits verification that any tax credit claimed upon a tax return is validly held by the person claiming such tax credit and properly taken in the year of claim and that any transfers of the tax credit are made in accordance with the requirements of this part.

(5) If the board elects to hire employees, such persons shall be selected by the board based upon knowledge and leadership in the field for which the person performs services

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for the board. The board shall charge fees for its guarantees to designated investors or for other services such that the board's operations may be conducted without subsequent legislative appropriation.

(6) Meetings of the board shall be subject to the provisions of s. 286.011, except information on securities acquired and held by the Florida Opportunity Fund shall be maintained in confidence.

288.9625 Issuance of tax credits.--

(1) The trust shall receive and hold for the purposes of this part tax credits under this part that may be used to reduce any tax liability imposed by the state under chapter 212, chapter 220, s. 624.509, or s. 624.510. The total amount of tax credits issued and transferred to the trust is \$75 million. The tax credits shall be transferable by the board as provided in this part, provided no such transferred tax credit shall be exercisable before July 1, 2011, or after July 1, 2036.

(2) The board may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the board. The board shall immediately notify the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Revenue, in writing, if any tax credit is transferred. The board shall be notified immediately of any transfers of tax credits by persons or businesses other than the board and shall notify the Department of Revenue, in writing, of such transfers.

(3) The board shall ensure that no more than \$20 million in tax credits is transferred that may be claimed and used to

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reduce taxes payable to the General Revenue Fund for any single  
state fiscal year. The board shall clearly indicate upon the  
face of the document transferring the tax credit the principal  
amount of the tax credit and the state fiscal year or years  
during which the credit may be claimed. Tax credits may be  
transferred in increments of no less than \$100,000. A copy of  
the document transferring the tax credit shall be transmitted to  
the executive director of the Department of Revenue, who shall  
allow the credit to be claimed against tax liabilities of the  
person or business consistent with the terms appearing in the  
transfer document.

(4) If the tax liabilities of the taxpayer are  
insufficient to exhaust the tax credit for which the taxpayer is  
eligible, the balance of the tax credit may be refunded by the  
state. If a tax credit granted under this section is not claimed  
in the year designated for claiming the credit on the transfer  
document, any return for the year in which the credit was  
eligible to be claimed may be amended to claim the credit within  
the time specified by ss. 95.091 and 215.26

(5) Persons or businesses to which tax credits under this  
section are transferred shall retain documentation supporting  
eligibility to claim the tax credits and evidence of the  
transfer of the tax credits, if applicable, until the time  
period provided to audit the tax returns on which the tax  
credits were claimed has passed.

(6) The Department of Revenue, in conjunction with the  
board, may adopt rules governing the manner and form of  
documentation required to claim tax credits granted or



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222 transferred under this section and may establish guidelines as  
223 to the requisites for an affirmative showing of qualification  
224 for tax credits granted or transferred under this section.

225 (7) An insurance company claiming a credit against premium  
226 tax liability under this section shall not be required to pay  
227 any additional retaliatory tax levied pursuant to s. 624.5091 as  
228 a result of claiming such credit. Because credits under this  
229 section are available to an insurance company, s. 624.5091 does  
230 not limit such credit in any manner.

231 (8) Any original sale of tax credits by the board shall be  
232 by competitive bidding unless the sale is for the full face  
233 value of the credits.

234 288.9626 Florida Opportunity Fund Management  
235 Corporation.--

236 (1) At the request of the board, Enterprise Florida, Inc.,  
237 shall facilitate the creation of the Florida Opportunity Fund  
238 Management Corporation as a private, not-for-profit corporation.  
239 Enterprise Florida, Inc., shall be the corporation's sole  
240 member. The corporation is not a public corporation or  
241 instrumentality of the state.

242 (2) The vice chair of Enterprise Florida, Inc., shall  
243 select from among its sitting board of directors a five-person  
244 appointment committee. The appointment committee shall select  
245 five initial members of a board of directors for the  
246 corporation. The persons elected to the initial board of  
247 directors by the appointment committee shall include persons who  
248 have expertise in the area of the selection and supervision of  
249 early stage investment managers or in the fiduciary management

250 of investment funds and other areas of expertise as deemed  
251 appropriate by the appointment committee. After election of the  
252 initial board of directors, vacancies on the board of directors  
253 of the corporation shall be elected by the board of directors of  
254 Enterprise Florida, Inc., and shall serve terms as provided in  
255 the corporation's organizational documents. Members of the board  
256 of directors shall be subject to any restrictions on conflicts  
257 of interest specified in the organizational documents and shall  
258 have no interest in any venture capital investment fund  
259 allocation manager selected by the corporation pursuant to the  
260 provisions of this part or in any investments made by the  
261 Florida Opportunity Fund.

262 (3) The purposes of the corporation shall be to organize  
263 the Florida Opportunity Fund, select an early stage venture  
264 capital investment fund allocation manager, negotiate the terms  
265 of a contract with the venture capital investment fund  
266 allocation manager, execute the contract with the selected  
267 venture capital investment fund allocation manager on behalf of  
268 the Florida Opportunity Fund, manage the business affairs of the  
269 Florida Opportunity Fund such as accounting, audit, insurance,  
270 and related requirements, receive investment returns from the  
271 Florida Opportunity Fund, and reinvest the investment returns in  
272 the Florida Opportunity Fund in order to provide additional  
273 venture capital investments designed to result in a significant  
274 potential to create new businesses and jobs in this state and  
275 further diversify the economy of this state.

276 (4) Upon organization, the corporation shall conduct a  
277 national solicitation for investment plan proposals from

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278 qualified venture capital investment fund allocation managers  
279 for the raising and investing of capital by the corporation. Any  
280 proposed investment plan shall address the applicant's level of  
281 experience, quality of management, investment philosophy and  
282 process, provability of success in fundraising, prior investment  
283 fund results, and plan for achieving the purposes of this part.  
284 The corporation shall select only a venture capital investment  
285 fund allocation manager with demonstrated expertise in the  
286 management and fund allocation of investments in venture capital  
287 funds.

288 (5) The corporation may charge a management fee on assets  
289 under management in the Florida Opportunity Fund. The fee shall  
290 be in addition to any fee charged to the Florida Opportunity  
291 Fund by the venture capital investment fund allocation manager,  
292 but the fee shall be charged only to pay for reasonable and  
293 necessary costs of the corporation.

294 (6) Directors of the corporation shall be compensated for  
295 direct expenses and mileage pursuant to s. 112.061 but shall not  
296 receive a fee or salary for service as directors.

297 (7) The corporation shall have all powers granted under  
298 its organizational documents and shall indemnify directors to  
299 the broadest extent permissible under the laws of this state.

300 288.9627 Florida Opportunity Fund.--

301 (1) The Florida Opportunity Fund is created as a for-  
302 profit limited partnership or limited liability corporation that  
303 shall be organized and incorporated in this state by the Florida  
304 Opportunity Fund Management Corporation upon request by the  
305 board. The board, the corporation, or the fund may contract with

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306   Enterprise Florida, Inc., for provision of services necessary  
307   for continuing operations.

308       (2) The fund shall invest on a fund-of-funds basis and  
309   emphasize investment in seed capital and early stage venture  
310   capital funds focusing on opportunities in this state. While not  
311   precluded from investing in funds with a wider geographic spread  
312   of portfolio investment, the fund shall require an investment  
313   fund to have a record of investment in this state, be based in  
314   this state, or have an office in this state staffed with a full-  
315   time, professional venture investment executive to be eligible  
316   for investment. The investments by the fund shall be on  
317   partnership interests in private venture capital funds and not  
318   in direct investments in individual businesses. The fund shall  
319   invest in venture capital funds with experienced managers or  
320   management teams with demonstrated expertise and a successful  
321   history in the investment of early stage venture capital funds.  
322   The fund may invest in newly created early stage venture capital  
323   funds as long as the manager or management teams of the funds  
324   have experience, expertise, and a successful history in the  
325   investment of venture capital funds. The Florida Opportunity  
326   Fund may not invest in a fund unless that fund has raised  
327   capital from other sources in an amount greater than the  
328   investment of the Florida Opportunity Fund. The corporation and  
329   its partners or shareholders may negotiate any and all terms and  
330   conditions for its investments, including draw back of  
331   management fees and other provisions that maximize investment in  
332   seed and early stage companies based in this state.

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333       (3) The interest of the corporation in the fund shall be  
334 to serve as general partner or manager and to be paid a  
335 management fee to cover its costs.

336       (4) Investments by designated investors in the fund shall  
337 be deemed permissible investments for state-chartered banks and  
338 for domestic insurance companies under applicable state law.

339       (5) If the fund is liquidated or has returned all capital  
340 to designated investors in accordance with contractual  
341 agreements, or the guarantee capacity of the trust, at the sole  
342 discretion of the board, is sufficient for additional  
343 certificates, a new funding of the Florida Opportunity Fund may  
344 be implemented for subsequent venture capital fund-of-funds  
345 investments. If the board takes exception to an additional  
346 funding, such additional funding may only be implemented without  
347 the benefit of certificates from the board.

348       288.9628 Annual reporting.--The board shall issue an  
349 annual report on the activities conducted by the Florida  
350 Opportunity Fund and present the report to the Governor, the  
351 President of the Senate, and the Speaker of the House of  
352 Representatives. The annual report shall include a copy of the  
353 independent audit of the fund and a valuation of the assets of  
354 the fund and shall review the progress of the investment fund  
355 allocation manager in implementing the fund's investment plan,  
356 the benefits to the state resulting from this program, including  
357 the number of businesses created and their associated industry,  
358 and the number of jobs created. The annual report shall also  
359 describe any sale of tax certificates and any sale of tax

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360 certificates that is reasonably anticipated by the board to meet  
361 its certificate obligations.

362 Section 2. Paragraph (y) is added to subsection (7) of  
363 section 213.053, Florida Statutes, to read:

364 213.053 Confidentiality and information sharing.--

365 (7) Notwithstanding any other provision of this section,  
366 the department may provide:

367 (y) Information relative to tax credits claimed under part  
368 X of chapter 288 to the board of trustees of the Florida Capital  
369 Investment Trust in the conduct of the trust's official  
370 business.

371

372 Disclosure of information under this subsection shall be  
373 pursuant to a written agreement between the executive director  
374 and the agency. Such agencies, governmental or nongovernmental,  
375 shall be bound by the same requirements of confidentiality as  
376 the Department of Revenue. Breach of confidentiality is a  
377 misdemeanor of the first degree, punishable as provided by s.  
378 775.082 or s. 775.083.

379 Section 3. Subsection (8) of section 220.02, Florida  
380 Statutes, is amended to read:

381 220.02 Legislative intent.--

382 (8) It is the intent of the Legislature that credits  
383 against either the corporate income tax or the franchise tax be  
384 applied in the following order: those enumerated in s. 631.828,  
385 those enumerated in s. 220.191, those enumerated in s. 220.181,  
386 those enumerated in s. 220.183, those enumerated in s. 220.182,  
387 those enumerated in s. 220.1895, those enumerated in s. 221.02,

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388 those enumerated in s. 220.184, those enumerated in s. 220.186,  
389 those enumerated in s. 220.1845, those enumerated in s. 220.19,  
390 those enumerated in s. 220.185, and those enumerated in s.  
391 220.187, and those enumerated in part X of chapter 288.

392 Section 4. Subsection (7) of section 624.509, Florida  
393 Statutes, is amended to read:

394 624.509 Premium tax; rate and computation.--

395 (7) Credits and deductions against the tax imposed by this  
396 section shall be taken in the following order: deductions for  
397 assessments made pursuant to s. 440.51; credits for taxes paid  
398 under ss. 175.101 and 185.08; credits for income taxes paid  
399 under chapter 220, the emergency excise tax paid under chapter  
400 221 and the credit allowed under subsection (5), as these  
401 credits are limited by subsection (6); credits allowed under  
402 part X of chapter 288; and all other available credits and  
403 deductions.

404 Section 5. For fiscal year 2006-2007, the sum of \$750,000  
405 is appropriated from the General Revenue Fund to the Florida  
406 Capital Investment Trust to be used for startup activities  
407 necessary to implement part X of chapter 288, Florida Statutes,  
408 as created by this act.

409 Section 6. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1467**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Council/Committee hearing bill: Economic Development, Trade &  
2 Banking Committee  
3 Representative(s) Grant offered the following:  
4

5 **Amendment**

6 Remove line(s) 170-173.  
7  
8  
9

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. **HB 1467**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Economic Development, Trade &  
2 Banking Committee

3 Representative(s) Grant offered the following:

4  
5 **Amendment**

6 On line 328, before the period insert:  
7 such that the amount invested in a Florida entity by the  
8 receiving venture capital fund is at least twice the amount  
9 invested by the corporation

10  
11  
000000



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1469  
**SPONSOR(S):** Grant  
**TIED BILLS:** HB 1467

Public Records

**IDEN./SIM. BILLS:** SB 2656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>		Carlson	Carlson <i>AWC</i>
2) <u>Governmental Operations Committee</u>			
3) <u>Commerce Council</u>			
4) _____			
5) _____			

### SUMMARY ANALYSIS

The bill creates a new public records exemption in chapter 288 for certain information and trade secrets relating to venture capital investment in Florida businesses under the Florida Capital Formation Act created by HB 1467.

Specifically, the bill will make the following information confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation; and
- Tax identification numbers, social security numbers, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, the amount of employee wages paid, and the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill does not grant rulemaking authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

Limited Government - The bill will reduce access to public records.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Background:**

HB 1467 creates the Florida Capital Formation Act, which is intended to enhance venture capital investment in Florida businesses. The bill creates the following entities:

- The Florida Opportunity Fund, which will invest on a "fund of funds" basis in venture capital firms that invest in Florida startup businesses. The Fund will not make direct investments in Florida businesses.
- The Florida Opportunity Fund Management Corporation, a subsidiary non-profit corporation of Enterprise Florida, Inc., which will manage the Florida Opportunity Fund; and
- The Florida Capital Investment Trust, which will hold \$75 million in sales, corporate income and insurance premium tax credits to secure private investments in the Florida Opportunity Fund.

The Management Corporation is charged with:

- Selecting an early stage venture capital investment fund allocation manager;
- Negotiating the terms of a contract with the venture capital investment fund allocation manager;
- Executing the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund;
- Managing the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements;
- Receiving investment returns from the Florida Opportunity Fund; and
- Reinvesting the investment returns in the Florida Opportunity Fund in order to provide additional venture capital investments in Florida

##### **Effect of Proposes Changes:**

The bill creates a new public records exemption in chapter 288 for certain information and trade secrets relating to the Florida Capital Formation Act created by HB 1467.

Specifically, the bill will make the following information confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- Trade secrets, as defined by s. 812.081, F.S., held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation; and

- Tax identification numbers, social security numbers, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, the amount of employee wages paid, and the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving capital investment from the Florida Opportunity Fund.

The bill provides for future review and repeal of the expanded exemption on October 2, 2011, provides a public necessity statement and provides an effective date contingent on the passage of HB 1467 or similar legislation.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 288.96275, F.S., providing that certain information relating to capital formation is confidential and exempt.

Section 2. Provides a public necessity statement.

Section 3. Provides a July 1, 2006 effective date contingent on the passage of HB 1467 or similar legislation.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS:**

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

##### **2. Other:**

###### Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

###### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

##### Drafting Issue – Social Security Numbers

Social security numbers are exempt from public records by s. 119.071(5)(a), F.S., and need not be included in the bill. Lines 8, 28-29, 47-48 and 66 should be amended to remove references to social security numbers.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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2006

A bill to be entitled

An act relating to public records; creating s. 288.96275, F.S.; providing an exemption from public records requirements for information held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation that is a trade secret; providing an exemption from public records requirements for tax identification numbers, social security numbers, analyses of gross receipts, amount of taxes paid, amount of capital investment, amount of employee wages paid, and detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving investment from the Florida Opportunity Fund; providing for review and repeal; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 298.96275, Florida Statutes, is created to read:

288.96275 Trade secret information; identification and performance information; public records exemption.--Any information held by the Florida Opportunity Fund and the Florida Opportunity Fund Management Corporation that is a trade secret as defined in s. 812.081 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Tax identification numbers, social security

29 numbers, analyses of gross receipts, the amount of taxes paid,  
30 the amount of capital investment, the amount of employee wages  
31 paid, and the detailed documentation to substantiate such  
32 performance information included in portfolio data pertaining to  
33 specific companies within the portfolios of venture capital  
34 funds receiving investment from the Florida Opportunity Fund is  
35 confidential and exempt from the provisions of s. 119.07(1) and  
36 s. 24(a), Art. I of the State Constitution. This section is  
37 subject to the Open Government Sunset Review Act in accordance  
38 with s. 119.15 and shall stand repealed on October 2, 2011,  
39 unless reviewed and saved from repeal through reenactment by the  
40 Legislature.

41       Section 2. The Legislature finds that it is a public  
42 necessity that any information held by the Florida Opportunity  
43 Fund and the Florida Opportunity Fund Management Corporation  
44 that is a trade secret be held confidential and exempt from s.  
45 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State  
46 Constitution. It is the further finding of the Legislature that  
47 it is a public necessity that tax identification numbers, social  
48 security numbers, analyses of gross receipts, amount of taxes  
49 paid, amount of capital investment, amount of employee wages  
50 paid, and detailed documentation to substantiate such  
51 performance information included in portfolio data pertaining to  
52 specific companies within the portfolios of venture capital  
53 funds receiving investment from the Florida Opportunity Fund be  
54 held confidential and exempt from s. 119.07(1), Florida  
55 Statutes, and s. 24(a), Art. I of the State Constitution. The  
56 disclosure of information concerning businesses that is obtained



57 through the administration of the Florida Capital Investment  
58 Trust and the Florida Opportunity Fund under ss. 288.9621-  
59 288.9628, Florida Statutes, the "Florida Capital Formation Act,"  
60 could injure a business in the marketplace by providing its  
61 competitors with detailed insights into the financial status and  
62 the strategic plans of the business, thereby diminishing the  
63 advantage that the business maintains over those that do not  
64 possess such information. Some of the documentation supplied to  
65 support a business's incentive claims could reveal private  
66 information, such as employee names and social security numbers,  
67 concerning that business's employees. Without this exemption,  
68 private sector businesses, whose records generally are not  
69 required to be open to the public, might refrain from  
70 participating in the economic development program and thus would  
71 not be able to use the incentives available under the program.  
72 If a business were unable to use the incentives, the business  
73 might choose not to invest venture capital in the State of  
74 Florida, depriving the state and the public of the potential  
75 economic benefits associated with such business activities in  
76 this state. The harm to businesses in the marketplace and to the  
77 effective administration of the economic development program  
78 caused by the public disclosure of such information far  
79 outweighs the public benefits derived from its release.

80       Section 3. This act shall take effect July 1, 2006, if  
81 House Bill 1467 or similar legislation is adopted in the same  
82 legislative session or an extension thereof and becomes law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1469

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade and Banking

Representative(s) Grant offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 298.96275, Florida Statutes, is created to read:

288.96275 Trade secret information; identification and performance information; public records exemption.--A trade secret, as defined in s. 688.002, held by the Florida Opportunity Fund is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Tax identification numbers, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, the amount of employee wages paid, and the detailed documentation to substantiate such performance information included in portfolio data pertaining to specific companies within the portfolios of venture capital funds receiving investment from the Florida Opportunity Fund is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act in accordance

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

with s. 119.15 and shall stand repealed on October 2, 2011,  
unless reviewed and saved from repeal through reenactment by the  
Legislature.

Section 2. The Legislature finds that it is a public  
necessity that a trade secret, as defined in the Uniform Trade  
Secrets Act, held by the Florida Opportunity Fund be held  
confidential and exempt from s. 119.07(1), Florida Statutes, and  
s. 24(a), Art. I of the State Constitution. In addition, the  
Legislature finds that it is a public necessity that tax  
identification numbers, analyses of gross receipts, amount of  
taxes paid, amount of capital investment, amount of employee  
wages paid, and detailed documentation to substantiate such  
performance information included in portfolio data pertaining to  
specific companies within the portfolios of venture capital  
funds receiving investment from the Florida Opportunity Fund be  
held confidential and exempt from s. 119.07(1), Florida  
Statutes, and s. 24(a), Art. I of the State Constitution. The  
disclosure of information concerning businesses that is obtained  
through the administration of the Florida Opportunity Fund under  
ss. 288.996-.9628, Florida Statutes, the "Florida Capital  
Formation Act," could injure a business in the marketplace by  
providing its competitors with detailed insights into the  
financial status and the strategic plans of the business,  
thereby diminishing the advantage that the business maintains  
over those that do not possess such information. Without this  
exemption, private sector businesses, whose records generally  
are not required to be open to the public, might refrain from  
participating in the economic development program, and thus  
would not be able to use the incentives available under the  
program. If a business were unable to use the incentives, the  
business might choose not to invest venture capital in the State

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

54 of Florida, depriving the state and the public of the potential  
55 economic benefits associated with such investment activities in  
56 this state. The harm to businesses in the marketplace and to the  
57 effective administration of the economic development program  
58 caused by the public disclosure of such information far  
59 outweighs the public benefits derived from its release.

60 Section 3. This act shall take effect July 1, 2006, if  
61 House Bill 1467 or similar legislation is adopted in the same  
62 legislative session or an extension thereof and becomes law.

63  
64  
65 ===== T I T L E A M E N D M E N T =====

66 Remove the entire title and insert:

67 A bill to be entitled

68 An act relating to public records; creating s. 288.96275,  
69 F.S.; providing an exemption from public records  
70 requirements for information held by the Florida  
71 Opportunity Fund that is a trade secret; providing an  
72 exemption from public records requirements for tax  
73 identification numbers, analyses of gross receipts, amount  
74 of taxes paid, amount of capital investment, amount of  
75 employee wages paid, and detailed documentation to  
76 substantiate such performance information included in  
77 portfolio data pertaining to specific companies within the  
78 portfolios of venture capital funds receiving investment  
79 from the Florida Opportunity Fund; providing for review  
80 and repeal; providing a statement of public necessity;  
81 providing a contingent effective date.  
82



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDTB 06-05      Oil & Gas Drilling  
**SPONSOR(S):** Economic Development, Trade & Banking Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee		Carlson	Carlson <i>MWC</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

### SUMMARY ANALYSIS

The proposed bill prohibits the exploration for and production of oil, gas and other petroleum products in sovereignty submerged lands and waterways over which the State of Florida has control, now or in the future.

This will apply the ban to the coastal areas three miles into the Atlantic Ocean and approximately nine miles into the Gulf of Mexico.

The bill has an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill prohibits oil or gas drilling activities within the sovereign submerged lands and waterways over which the state has control.

#### B. EFFECT OF PROPOSED CHANGES:

### **BACKGROUND**

#### **Offshore Drilling for Oil and Natural Gas**

##### The Outer Continental Shelf

The Outer Continental Shelf (OCS) consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the States' jurisdiction and the seaward extent of Federal jurisdiction. The continental shelf is the gently sloping undersea plain between a continent and the deep ocean. The United States OCS has been divided into four leasing regions. They are the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaska OCS Region. In 1953, Congress designated the Secretary of the Department of Interior to administer mineral exploration and development of the entire OCS through the Outer Continental Shelf Lands Act (OCSLA). The OCSLA was amended in 1978 directing the secretary to:<sup>1</sup>

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- meet the energy needs of the country;
- protect the human, marine, and coastal environments; and
- receive a fair and equitable return on the resources of the OCS.

*State jurisdiction* over the OCS is defined as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (approximately 9 nautical miles) seaward from the shoreline.
- Louisiana is extended 3 imperial nautical miles (imperial nautical mile = 6080.2 feet) seaward from the shoreline.
- All other States' seaward limits are extended 3 nautical miles (approximately 3.3 statute miles) seaward from the shoreline.

*Federal jurisdiction* over the OCS is defined under accepted principles of international law. The seaward limit is defined as the farthest of 200 nautical miles seaward of the shoreline or, if the continental shelf can be shown to exceed 200 nautical miles, a distance not greater than a line 100 nautical miles from the 2,500-meter isobath or a line 350 nautical miles from the shoreline.<sup>2</sup>

The Outer Continental Shelf is a significant source of oil and gas for the nation's energy supply. The OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil

<sup>1</sup> <http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html>

<sup>2</sup> <http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html>

and gas resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS.<sup>3</sup>

The OCS Lands Act requires the Department of Interior (DOI) to prepare a 5-year program that specifies the size, timing and location of areas to be assessed for Federal offshore natural gas and oil leasing. It is the role of DOI to ensure that the U.S. government receives fair market value for acreage made available for leasing and that any oil and gas activities conserve resources, operate safely, and take maximum steps to protect the environment. OCS oil and gas lease sales are held on an area-wide basis with annual sales in the Central and Western Gulf of Mexico with less frequent sales held in the Eastern Gulf of Mexico and offshore Alaska. The program operates along all the coasts of the United States - with oil and gas production occurring on the Gulf of Mexico, Pacific, and Alaska and OCS.<sup>4</sup>

### The Minerals Management Service

The Minerals Management Service (MMS), a bureau in the DOI, is the federal agency that manages the nation's natural gas, oil and other mineral resources on the OCS. The MMS also collects, accounts for and disburses more than \$8 billion per year in revenues from federal offshore mineral leases. The MMS oversees two major programs: Offshore Minerals and Minerals Revenue Management. The Offshore Minerals program, which manages the mineral resources on the OCS, comprises three regions: Alaska, the Pacific, and the Gulf of Mexico.<sup>5</sup>

The Gulf of Mexico OCS Region is made up of three planning areas along the Gulf Coast - the Western, Central, and Eastern Gulf of Mexico Planning Areas. These areas contain 43 million acres under lease. There are 3,911 offshore production platforms active in the search for natural gas and oil on the Gulf OCS. These production facilities contribute significantly to the nation's energy supply.<sup>6</sup>

### Eastern Gulf of Mexico Planning Area<sup>7</sup>

The Eastern Gulf of Mexico Planning Area extends along the Gulf's northeastern coast for some 700 miles, from Baldwin County, Alabama, southward to the Florida Keys. The area encompasses approximately 76 million acres, with water depths ranging from approximately 30 feet to nearly 10,000 feet. The area extends for more than 300 miles seaward of the state/federal boundary (9 miles off the Florida coast).

Since the late 1980's, a limited amount of OCS activity has taken place in the Eastern Gulf of Mexico Planning Area because of administrative deferrals and annual congressional moratoria.

The MMS has estimated that between 6.95 and 9.22 trillion cubic feet of natural gas and 1.57 and 2.78 billion barrels of oil and condensate are contained in the Eastern Gulf of Mexico Planning Area. Drilling for natural gas and oil has been occurring in the Eastern Gulf of Mexico offshore Alabama and Florida for more than three decades. The first of 11 natural gas and oil lease sales held offshore Florida occurred in 1959 and resulted in the issuance of 23 leases. Additional lease sales have been held periodically in the Eastern Gulf from 1973 through 2003. Currently, there are 241 active leases in the Eastern Gulf of Mexico Planning Area.

Exploratory drilling started in the Eastern Gulf of Mexico in the mid-1970's with the drilling of Destin Dome Block 162, located 40 miles south of Panama City, Florida. After two years of drilling and 15 dry holes, exploration stopped. To date, over 54 exploratory wells have been drilled in the Eastern Gulf of Mexico. Thirteen wells discovered natural gas, condensate, and crude oil.

<sup>3</sup> <http://www.mms.gov/offshore/>

<sup>4</sup> <http://www.mms.gov/offshore/>

<sup>5</sup> <http://www.mms.gov/aboutmms/>

<sup>6</sup> <http://www.gomr.mms.gov/homepg/offshore/gulfocs/gulfocs.html>

<sup>7</sup> <http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html>



Three Eastern Gulf lease sales were made in the 1980's and there was renewed industry interest in the Destin Dome area. In the late 1980's, Chevron U.S.A. and Gulfstar made natural gas discoveries in the area.

In October 1995, 73 oil and gas leases located *south* of 26° N. latitude (the approximate latitude of Naples, Florida) were returned to the federal government as part of a litigation settlement. Consequently, no active Federal natural gas and oil leases exist off southwest Florida. Likewise, no active leases exist in the Straits of Florida Planning Area or off Florida's east coast (South Atlantic Planning Area).

In 1996, a development plan was filed by Chevron U.S.A. and partners on the Destin Dome 56 Unit. On July 24, 2000, Chevron U.S.A. and partners filed a lawsuit against the U.S. government for denying the companies "timely and fair review" of plans and permits relating to the Destin Dome 56 Unit. In May 2002, the Department agreed to settle the litigation with the oil companies. The companies – Chevron, Conoco and Murphy Oil – relinquished seven of nine leases in the unit that were the subject of the litigation in exchange for \$115 million. The remaining two leases, Destin Dome Blocks 56 and 57, are to be held by Murphy and will be suspended until at least 2012, under the terms of the agreement. Murphy agreed not to submit a development plan on the two remaining leases before 2012, the year when the current moratoria will expire. Under the terms of the agreement, the leases can not be developed unless approved by both the federal government and the State of Florida.

Unocal began the first production in the Eastern Gulf Planning Area in mid-February 1999 on Pensacola Block 881. Located approximately 12 miles offshore Alabama, this site involves the production of some 5 million cubic feet of natural gas per day.

In October 1999, Gulfstream Natural Gas Systems (ANR) and Buccaneer Gas Pipeline Company (Transco/Williams) submitted pipeline right-of-way applications to the MMS for the construction of two 400-mile (36-inch) natural gas pipelines spanning the Eastern Gulf of Mexico. The Gulfstream right-of-way was approved by MMS on June 1, 2001. This line went into service in June 2002.

In November 1996, DOI released the OCS Oil and Gas Leasing Program (1997-2002). The program included 16 lease sales, with one sale proposed for the Eastern Gulf of Mexico in 2001. The original sale area was reviewed to be consistent with the State of Florida's opposition to offshore oil and gas activities within 100 miles of its coast. The first steps in the 3-year planning process began on January 25, 1999, with the release of the Call for Interest and Information and the Notice of Intent to Prepare an Environmental Impact Statement. A draft environmental impact statement was released in December 2000 and a final EIS was made available to the public in July 2001.

In July 2001, Sale 181 was adjusted from 5.9 million acres to about 1.5 million acres or 256 blocks. The adjusted area lies more than 100 miles off the Alabama/Florida State line. Twenty-three blocks in this area were under lease at that time. Lease Sale 181 was held on December 5, 2001. MMS awarded leases on 95 tracts involving \$340,474,113. Seventeen companies participated in this sale.

On December 10, 2003, Eastern Gulf of Mexico Sale 189 was held. Six companies participated in the lease sale that offered 138 blocks comprising approximately 794,880 acres offshore Alabama. The highest bid received was \$2.2 million, submitted by Shell and Nexen.

In an August 22, 2005, Department of Interior news release, it was announced that the MMS is seeking initial public comment on the development of its 2007-2012 five-year leasing plan for energy development on the Outer Continental Shelf (OCS) and accompanying environmental impact statement.<sup>8</sup> This includes the Eastern Gulf of Mexico Planning Area. The announcement stated:

<sup>8</sup> [http://www.doi.gov/news/05\\_News\\_Releases/050822.htm](http://www.doi.gov/news/05_News_Releases/050822.htm)

"The announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment not only on energy development but also on other economic and environmental issues in the OCS areas.

'The Outer Continental Shelf contains billions of barrels of oil and trillions of cubic feet of natural gas that can be safely produced,' Interior Secretary Gale Norton said. 'With our reliance on imports of foreign oil climbing each year, we would be irresponsible if we did not consider how we might develop these abundant domestic resources.'

Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development.

The Bush Administration has repeatedly expressed its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

However, recent energy legislation passed by Congress calls for a comprehensive inventory and analysis of the oil and natural gas resources for all areas of the OCS.

Therefore, as MMS undertakes the process of drafting its proposal, the agency is seeking comment on the potential resources available in all areas of the OCS, recognizing that many of these areas are subject to existing moratoria and will not be fully analyzed for possible leasing. In seeking public comment, Secretary Norton reaffirmed the Bush Administration's pledge not to conduct any new leasing under the 2007-2012 five-year plan within 100 miles of Florida's coast, in the Eastern Gulf of Mexico Planning Area. MMS is also asking the public to comment specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS; and whether the Interior Department should work with Congress to develop gas-only leases.

The 2007-2012 OCS oil and gas leasing program will be the seventh program prepared since Congress passed the OCS Lands Act in 1978. The Act requires the Secretary of the Interior to prepare and maintain five-year programs for offshore oil and natural gas leasing. The current program runs through June 30, 2007.

Once public comment is received, MMS will develop a draft proposed program followed by a proposed program and draft EIS. The public will have an opportunity to comment on both documents.

The following is the schedule for the 2007-2012 five-year program:"

Date	Step
August 24, 2005	Solicit comments and information (Federal Register Notice)
Winter 2005	Issue draft proposed program (60-day comment period)
Summer 2006	Issue proposed program and draft EIS (90-day comment period)
Winter 2007	Issue proposed final program and final EIS (60-day waiting period)
Spring 2007	Approve five-year program for July 2007-July 2012

## The Exploration and Development Process

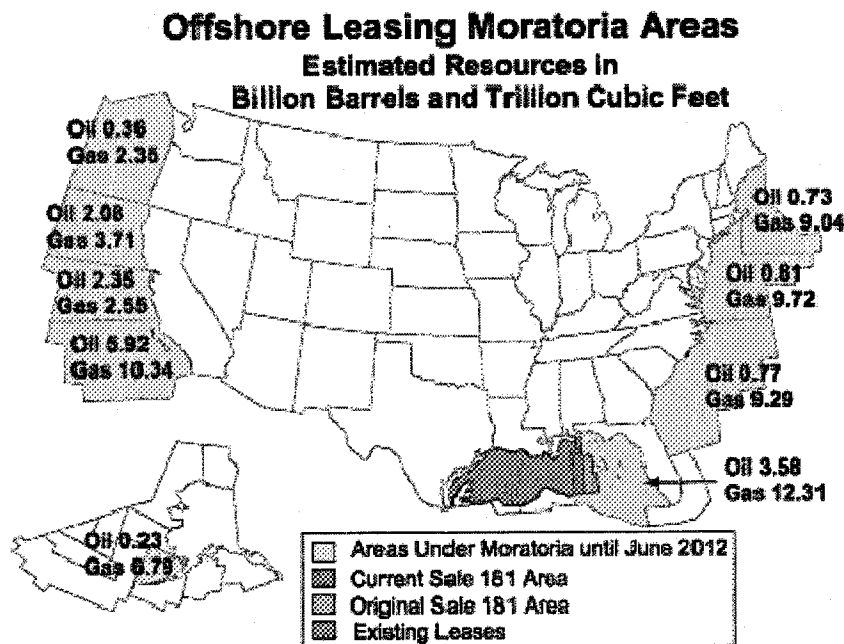
Once a company acquires a lease, the company has to prepare an exploration plan and have it approved by MMS and other federal and state agencies in order to drill a well. Typical exploration plans propose the drilling of one or more exploratory wells. The MMS conducts an environmental review of the impacts of drilling the well. Should a discovery be made, the company may then prepare and file a development plan. The exploration and development plans must be consistent with the affected state's Coastal Zone Management Plan

During exploratory drilling or production operations on the OCS, the MMS inspection program calls for MMS inspectors to review operations and periodically visit and inspect facilities to ensure clean and environmentally safe operations.

To prepare for lease sales and to protect the environment during offshore drilling operations, MMS conducts environmental studies. Several new studies are planned and/or currently underway.<sup>9</sup>

## Federal Moratoria

Congress and past Presidents have placed moratoria on offshore drilling and development on the OCS on both the U.S. East and West Coasts. Included in the moratoria is the Eastern Gulf of Mexico. The consequence of the moratoria is to foreclose until at least 2012 any effort to explore for critical oil and gas resources that are estimated to lie beneath these areas. In response to recent sharp increases in fuel and home heating oil, several attempts have been made in Congress to limit or remove these moratoria. The map below illustrates these moratoria areas.<sup>10</sup>



Note: Locations of existing leases offshore California and in Eastern Gulf of Mexico are approximate and intended to be representative only.

Source: Minerals Management Service

<sup>9</sup> <http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html>

<sup>10</sup> <http://api-ep.api.org/issues/index.cfm>

## Current State Law

Under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of state-owned submerged lands. These state-owned submerged lands extend waterward from the shoreline for approximately 9 miles into the Gulf of Mexico and 3 miles into Atlantic Ocean.<sup>11</sup> Section 253.61, F.S., expressly prohibits the Trustees from granting any "oil or natural gas *lease*" on state-owned submerged lands off the State's west coast. A similar provision in Section 377.24, F.S., prohibits the Department of Environmental Protection from issuing a *permit* "to drill a well in search of oil or gas" on the same state-owned submerged lands.

## **PROPOSED CHANGES**

This bill prohibits the exploration for and production of oil, gas and other petroleum products in sovereignty submerged lands and waterways over which the State of Florida has control, now or in the future.

"Sovereignty submerged lands" are those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.<sup>12</sup>

In regards to Florida jurisdiction over submerged waters, the United States Supreme Court held that the Submerged Lands Act granted to Florida "a three-marine-league belt of submerged land under the Gulf of Mexico seaward from its coastline." "Three marine leagues" are defined as "nine marine, nautical, or geographic miles, or approximately 10 ½ land, statute or English miles."<sup>13</sup>

### C. SECTION DIRECTORY:

Section 1. Creates s. 377.061, F.S., relating to the prohibition on oil and gas drilling.  
Section 2. Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

<sup>11</sup> Section 1, Article II, Florida Constitution

<sup>12</sup> See Rule 18-21.900, Florida Administrative Code.

<sup>13</sup> *U.S. v. Fla.*, 363 U.S. 121 (1960).

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will have a negative impact on private entities in Florida who seek to engage in oil or gas drilling activities in the sovereign submerged lands of the state. The actual impact on the private sector is unknown.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

**2. Other:** None.

**B. RULE-MAKING AUTHORITY:** None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

PCB EDTB 06-05

ORIGINAL

2006

A bill to be entitled  
An act relating to oil and gas drilling; creating s.  
377.061, F.S.; prohibiting activities associated with the  
exploration for and production of oil, gas, or other  
petroleum products in sovereignty submerged lands and  
waterways; providing an effective date.

WHEREAS, the Legislature declares that the state has a vital  
interest and responsibility to protect its citizens, coastal  
areas, natural wildlife, and tourism industry, and

WHEREAS, the Legislature further declares that the  
possibility for spillage of oil or any other pollutant as a  
result of the activities associated with the exploration and  
production of oil, gas, or other petroleum products from certain  
lands and waters surrounding the state constitutes a threat to  
the health and welfare of the state's citizens, coastal areas,  
natural wildlife, and tourism industry, and

WHEREAS, the Legislature finds that despite any safeguards  
that could be imposed on the activities associated with the  
exploration and production of oil, gas, or other petroleum  
products from certain lands and waters surrounding the state,  
pollution from these activities cannot be eliminated, and

WHEREAS, the possibility of an oil spill cannot be  
eliminated and pollution from an oil spill would be catastrophic  
to the state's citizens, coastal areas, natural wildlife, and  
tourism industry, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

PCB EDTB 06-05

ORIGINAL

2006

30        Section 1.   Section 377.061, Florida Statutes, is created to  
31 read:

32        377.061 Prohibition on exploration for and production of  
33 oil, gas, or other petroleum products in sovereignty submerged  
34 lands and waterways.--All activities associated with the  
35 exploration for and production of oil, gas, or other petroleum  
36 products in the sovereignty submerged lands and waterways over  
37 which the state has jurisdiction or control, now or in the  
38 future, are prohibited.

39        Section 2.   This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **PCB EDTB 06-05**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade &  
Banking Committee

Representative(s) Bilirakis offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 377.061, Florida Statutes, is created  
to read:

377.061 Prohibition on exploration for and production of  
oil, gas, or other petroleum products.--

(1) It is the policy of this state that the exploration  
for and production of oil, gas, or other petroleum products in  
the sovereignty submerged lands and waterways over which the  
state has jurisdiction or control, now or in the future, be  
prohibited.

(2) No Outer Continental Shelf energy activity, as that  
term is defined under section 1453 of the Coastal Zone  
Management Act of 1972, as amended, shall be permitted by this  
state.

(3) The provisions of this section shall be submitted by  
the Florida Department of Environmental Protection to the  
Department of Commerce pursuant to the Coastal Zone Management



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Act of 1972, as amended, to be made part of the state's coastal zone management program under Chapter 380, within six months of the effective date of this act.

(4) No state agency or local government shall approve any license, permit, activity or project that violates this section.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to oil and gas drilling; creating s. 377.061, F.S.; prohibiting activities associated with the exploration for and production of oil, gas, or other petroleum products in sovereignty submerged lands and waterways; prohibiting Outer Continental Shelf energy activities; including the provisions of this act in the state coastal zone management plan; requiring the Department of Environmental Protection to file the plan with the United States Department of Commerce; prohibiting the approval of any license, permit or activity violating this act; providing an effective date.

WHEREAS, the state of Florida comprises 2,276 miles of tidal shoreline, and 8,426 miles of detailed tidal shoreline, and

WHEREAS, sand beaches comprise 1,350 miles of coastline, and

WHEREAS, in 2004, 13 million residents of Florida lived along the coastline, and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

53 WHEREAS, the tourism industry attracted 79.7 million  
54 tourists to Florida, who spent \$57 billion and generated \$3.4  
55 billion of tax revenues in 2004, and

56 WHEREAS, tourists are attracted to Florida by virtue of its  
57 pristine beaches, waterways and coastal recreational activities,  
58 and

59 WHEREAS, saltwater fishing contributed \$5.8 billion and  
60 59,418 jobs to Florida in 2005, and

61 WHEREAS, the commercial fishing industry generated an  
62 estimated \$562 million of revenue and provided 9,787 jobs to  
63 Florida in 2005, and

64 WHEREAS, Florida has more seafood processing plants than  
65 any other state and the seafood processing industry shipped \$614  
66 million worth of products and provided 3,108 jobs statewide in  
67 2005, and

68 WHEREAS, Florida fishermen catch more than 90 percent of  
69 the nation's supply of grouper, pompano, mullet, stone crab,  
70 pink shrimp, spiny lobsters, and Spanish mackerel, and

71 WHEREAS, the value of Florida aquaculture sales ranks third  
72 in the nation and reached \$95.5 million in 2003, and

73 WHEREAS, the total economic impact of the Florida's seafood  
74 harvest is more than \$1 billion annually, and creates more than  
75 20,000 full-time and 10,000 part-time jobs, and

76 WHEREAS, the coral reef found in Key West is the third  
77 largest in the world, and the largest in North America, and

78 WHEREAS, oil and gas drilling would potentially damage or  
79 destroy living bottom communities, beaches, coastal barrier  
80 islands, wetlands, seagrass beds, mangroves, corals, and animal  
81 life, and

82 WHEREAS, such damage would result from pipeline placement,  
83 increased barge and tanker traffic, construction of supporting

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Amendment No. (1)

84 facilities, discharge of trash and debris, and rig construction  
85 and removal, and

86 WHEREAS, the release of hydrocarbons, chrome, lead, barium,  
87 cadmium, copper, antimony, arsenic, mercury and other toxic  
88 chemicals would result from the discharge of drilling muds,  
89 production waters, and oil or gas, and

90 WHEREAS, the chemicals released into the environment from  
91 these discharges are virtually non-recoverable and are extremely  
92 toxic, and

93 WHEREAS, the Legislature declares that the state has a  
94 vital interest and responsibility to protect its citizens,  
95 coastal areas, natural wildlife, and economy, and

96 WHEREAS, the Legislature further declares that the  
97 possibility for spillage of oil or any other pollutant as a  
98 result of the activities associated with the exploration and  
99 production of oil, gas, or other petroleum products in certain  
100 lands and waters surrounding the state constitutes a grave  
101 threat to the health and welfare of the state's citizens,  
102 coastal areas, natural wildlife, and economy, and

103 WHEREAS, the Legislature finds that despite any safeguards  
104 that could be imposed on the activities associated with the  
105 exploration and production of oil, gas, or other petroleum  
106 products from certain lands and waters surrounding the state,  
107 the potential serious harm caused by these activities cannot be  
108 eliminated, and

109 WHEREAS, the possibility of an oil spill cannot be  
110 eliminated and pollution from an oil spill would be catastrophic  
111 to the citizens, coastal areas, natural wildlife, and economy of  
112 this state, NOW, THEREFORE,  
113



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 69 CS

Exemptions from the Tax on Sales, Use, and Other Transactions

**SPONSOR(S):** Meadows and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1180, SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Noriega	Diez-Arguelles
2) Economic Development, Trade & Banking Committee		Olmedillo	Carlson <i>MNC</i>
3) Fiscal Council			
4)			
5)			

### SUMMARY ANALYSIS

The bill broadens an existing sales tax exemption for industrial machinery and equipment purchased for use in an expanding facility engaged in spaceport activities or for use in an expanding manufacturing facility. The bill eliminates a requirement that the business pay the first \$50,000 in sales taxes per calendar year on these types of purchases before the exemption applies. The effect of the bill is to provide a full, rather than partial, sales tax exemption for industrial machinery and equipment purchases when the business can demonstrate that the items will be used to increase productive output at the facility by at least 10 percent.

The bill also broadens an existing sales tax exemption for machinery and equipment purchased for use by new or expanding solid minerals, mining, or processing operations. Under current law, this exemption can only be taken as a credit against severance taxes due and the taxpayer must demonstrate the creation of a certain number of jobs. The bill removes these two requirements, placing these types of businesses in the same position as other new and expanding manufacturers.

In addition, this bill broadens an existing sales tax exemption for machinery and equipment purchased by an expanding business pursuant to federal procurement regulations by eliminating a requirement that the business pay the first \$100,000 in sales tax per calendar year on these types of purchases before the exemption applies.

Finally, the bill provides Legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida, including: the development of free-trade agreements with the Americas; the potential to add thousands of well-paying jobs in the state; to secure Florida's place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

The Revenue Estimating Conference has estimated that this bill will have a negative fiscal impact of \$19.7 million to state government and \$4.4 million to local governments in FY 2006-07, and of \$21.4 million to state government and \$4.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

The bill provides an appropriation of \$210,069 from the General Revenue Fund and four positions are authorized to the Department of Revenue.

This bill appears to be a mandate that requires a 2/3 vote of the membership of each house to pass.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0069b.EDTB.doc

**DATE:** 03/20/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill eliminates the sales tax paid on the purchase of machinery and equipment by expanding businesses.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of taxes on sales, use, and other transactions. This chapter also contains provisions for sales and use tax exemptions and credits applicable to certain items and under certain circumstances.

Industrial machinery and equipment purchased for exclusive use by a *new* business in spaceport activities or for use in a *new* business that manufactures, processes, compounds, or produces for sale items of tangible property at a fixed location are exempt from the tax imposed by ch. 212, F.S.<sup>1</sup> To avail itself of the exemption, a business must demonstrate to the Department of Revenue that the machinery and equipment are used in this state. Additionally, a new business must purchase the machinery or equipment before the date the business initially begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

A similar, but partial, sales tax exemption is provided for industrial machinery and equipment used exclusively by an *expanding* facility that is engaged in spaceport activities or used in an *expanding* manufacturing facility that manufactures, processes, compounds, or produces for sale items of tangible personal property at a fixed location in this state. In these cases, however, the exemption applies to tax amounts in excess of \$50,000 per calendar year on machinery and equipment purchases. Also, industrial machinery and equipment purchased by an expanding business pursuant to federal procurement regulations is exempt from sales tax in excess of \$100,000 per calendar year.<sup>2</sup> In order for the exemption to apply to these expanding businesses, the businesses must demonstrate that the machinery and equipment are used to increase productive output by at least 10 percent.<sup>3</sup>

Machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations are entitled to the new or expanded business exemptions only by way of a credit against phosphate taxes paid.<sup>4</sup> In addition, in order to qualify for the exemption, a new mining business must create at least 100 new jobs in Florida; an expanding mining business with less than 2,500 jobs must increase the number of Florida jobs by at least 5 percent; and an expanding mining business with more than 2,500 jobs must increase the number of Florida jobs by at least 3 percent.<sup>5</sup>

When the industrial machinery and equipment are purchased for use in an expanding printing manufacturing facility, the \$50,000 threshold does not apply, and the taxpayer does not have to pay any sales tax amounts related to the purchases.<sup>6</sup>

<sup>1</sup> Section 212.08(5)(b)1., F.S. The term "spaceport activities" refers to activities directed or sponsored by the Florida Space Authority on spaceport territory through its power and duties under the Florida Space Authority Act (s. 212.02(22), F.S.).

<sup>2</sup> Section 212.08(5)(d), F.S.

<sup>3</sup> Section 212.08(5)(b)2.a., F.S.

<sup>4</sup> Section 212.08(5)(b)5., F.S.

<sup>5</sup> Section 212.0805, F.S.

<sup>6</sup> Section 212.08(5)(b)2.b., F.S.

To receive these exemptions, qualifying businesses must apply to the Department of Revenue for temporary tax exemption permits. A business must maintain all books and records to support the exemption. The department, upon an audit which determines that the business does not meet the criteria for the exemption, shall immediately collect from the business the amount of taxes exempted plus interest and any penalty.<sup>7</sup>

The term "industrial machinery and equipment" refers to "tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities."<sup>8</sup>

### Proposed Changes

This bill provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." The bill revises the existing sales and use tax exemption for industrial machinery and equipment purchased for exclusive use in an expanding facility that is engaged in spaceport activities or for use in an expanding manufacturing facility, by removing a limitation in the current law that the exemption applies solely to tax amounts above \$50,000 per calendar year. The bill also removes the \$100,000 threshold applicable to purchases of machinery and equipment pursuant to federal procurement regulations. The bill retains the requirement that the taxpayer demonstrate that the machinery and equipment will be used to increase productive output by at least 10 percent at the facility.

The bill removes the requirement that businesses involved in mining operations can only take the exemption as a credit against phosphate taxes due and repeals the requirement for job creation applicable to mining operations.

By eliminating the \$50,000 threshold on the spaceport and the general manufacturing exemption, the bill has the effect of making a separately stated and specific exemption for printing manufacturing facilities redundant, as these printing facilities would now be captured within the general manufacturing exemption. Therefore, the bill deletes from current law the separately-stated and specific exemption for printing manufacturing facilities codified in s. 212.08(5)(b)2.b., F.S.

This bill also provides legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida.

The bill has an effective date of July 1, 2006.

### C. SECTION DIRECTORY:

- |                   |  |
|-------------------|--|
| <u>Section 1.</u> | Provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act."   |
| <u>Section 2.</u> | Provides legislative findings and purpose.   |
| <u>Section 3.</u> | Amends s. 212.08, F.S., relating to sales tax exemptions for machinery and equipment.  |
| <u>Section 4.</u> | Repeals s. 212.0805, F.S., relating to the number of jobs that have to be created by a new or expanding mining operation in order to be entitled to a sales tax exemption. |
| <u>Section 5.</u> | Appropriates \$210,069 from the General Revenue Fund, and authorizes four positions to the Department of Revenue to implement the provisions of the act during FY 2006-07. |
| <u>Section 6.</u> | Provides an effective date of July 1, 2006.  |

<sup>7</sup> Section 212.08(5)(b)3.a.-c., F.S.

<sup>8</sup> Section 212.08(5)(b)6.a., F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	<u>2006-07</u>	<u>2007-08</u>
General Revenue	(19.7m)	(21.3m)
State Trust	(Insignificant)	(0.1m)
Total	(19.7m)	(21.4m)

#### 2. Expenditures:

The bill provides an appropriation of \$210,069 from the General Revenue Fund and four positions are authorized to the Department of Revenue. Of the funds provided, \$191,825 are recurring and \$18,244 are nonrecurring.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	<u>2006-07</u>	<u>2007-08</u>
Revenue Sharing	(0.6m)	(0.7m)
Local Gov't. Half Cent	(1.9m)	(2.0m)
Local Option	(1.9m)	(2.0m)
Total Local Impact	(4.4m)	(4.7m)

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses engaged in certain activities that purchase industrial machinery and equipment to expand productive output by 10 percent will not be subject to any sales tax on the purchase of such equipment.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill will reduce the authority of counties to raise revenues in the aggregate through local option sales taxes by \$1.9 million, as estimated by the Revenue Estimating Conference. As such, the mandates provision appears to apply to this bill and it does not seem to qualify for an exemption. Therefore, the bill should have a 2/3 vote of the membership of each house.



2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue recommends technical amendments that revise the definition of "productive output," and that add definitions for "new business," and "expanding business" or "expanding facility."

In addition, the Department recommends an increase in the appropriation required to fund its four authorized positions. The recurring costs for these positions are now estimated to be \$203,574, and the nonrecurring costs are now estimated to be \$19,372. This reflects a total increase of \$12,877 over the appropriation listed in the bill.

The Department also recommends changing the effective date to January 1, 2007, which will allow the Department sufficient time to properly inform all affected taxpayers about the changes in the exemptions.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 22, 2006, the Finance & Tax Committee adopted an amendment to the bill. The amendment added that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." In addition, the amendment provided legislative findings and purpose, which address the importance of a competitive manufacturing business climate in Florida.

This analysis reflects the changes contained in the amendment adopted by the Finance and Tax Committee.

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CHAMBER ACTION

The Finance & Tax Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to exemptions from the tax on sales, use, and other transactions; providing a short title; providing legislative findings and purpose; amending s. 212.08, F.S.; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment used to increase productive output; deleting an exemption for machinery and equipment used to expand certain printing manufacturing facilities or plant units; deleting a limitation on application of the exemption for machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations by way of a prospective credit; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment purchased under a federal procurement contract; repealing s. 212.0805, F.S., relating to qualifications for the exemption and credit for machinery and equipment purchased by an expanding business for use in phosphate or other solid minerals

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severance, mining, or processing operations; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act may be cited as the "Florida Manufacturing Global Competitiveness Act."

Section 2. Legislative findings and purpose.--The Legislature finds that a competitive manufacturing business climate is important given that the manufacturing sector contributes significantly to the economy of this state, helping the state to weather natural and manmade disasters; that the development of free trade agreements with the Americas will allow the state to be the gateway to increased international trade that will expand the opportunities for manufacturing exports, potentially add thousands of well-paying jobs in the state, and secure this state's place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

Section 3. Paragraphs (b) and (d) of subsection (5) of section 212.08, Florida Statutes, are amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following

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are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(b) Machinery and equipment used to increase productive output.--

1. Industrial machinery and equipment purchased for exclusive use by a new business in spaceport activities as defined by s. 212.02 or for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2.~~a~~. Industrial machinery and equipment purchased for exclusive use by an expanding facility which is engaged in spaceport activities as defined by s. 212.02 or for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter ~~in excess of \$50,000 per calendar year~~ upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded facility or business by not less than 10 percent.

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~~b. Notwithstanding any other provision of this section, industrial machinery and equipment purchased for use in expanding printing manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such an expanded business by not less than 10 percent.~~

3.a. To receive an exemption provided by subparagraph 1. or subparagraph 2., a qualifying business entity shall apply to the department for a temporary tax exemption permit. The application shall state that a new business exemption or expanded business exemption is being sought. Upon a tentative affirmative determination by the department pursuant to subparagraph 1. or subparagraph 2., the department shall issue such permit.

b. The applicant shall be required to maintain all necessary books and records to support the exemption. Upon completion of purchases of qualified machinery and equipment pursuant to subparagraph 1. or subparagraph 2., the temporary tax permit shall be delivered to the department or returned to the department by certified or registered mail.

c. If, in a subsequent audit conducted by the department, it is determined that the machinery and equipment purchased as exempt under subparagraph 1. or subparagraph 2. did not meet the criteria mandated by this paragraph or if commencement of production did not occur, the amount of taxes exempted at the

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106 time of purchase shall immediately be due and payable to the  
107 department by the business entity, together with the appropriate  
108 interest and penalty, computed from the date of purchase, in the  
109 manner prescribed by this chapter.

110 d. In the event a qualifying business entity fails to  
111 apply for a temporary exemption permit or if the tentative  
112 determination by the department required to obtain a temporary  
113 exemption permit is negative, a qualifying business entity shall  
114 receive the exemption provided in subparagraph 1. or  
115 subparagraph 2. through a refund of previously paid taxes. No  
116 refund may be made for such taxes unless the criteria mandated  
117 by subparagraph 1. or subparagraph 2. have been met and  
118 commencement of production has occurred.

119 4. The department shall adopt rules governing applications  
120 for, issuance of, and the form of temporary tax exemption  
121 permits; provisions for recapture of taxes; and the manner and  
122 form of refund applications and may establish guidelines as to  
123 the requisites for an affirmative showing of increased  
124 productive output, commencement of production, and qualification  
125 for exemption.

126 5. The exemptions provided in subparagraphs 1. and 2. do  
127 not apply to machinery or equipment purchased or used by  
128 electric utility companies, communications companies, oil or gas  
129 exploration or production operations, publishing firms that do  
130 not export at least 50 percent of their finished product out of  
131 the state, any firm subject to regulation by the Division of  
132 Hotels and Restaurants of the Department of Business and  
133 Professional Regulation, or any firm which does not manufacture,

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134 process, compound, or produce for sale items of tangible  
135 personal property or which does not use such machinery and  
136 equipment in spaceport activities as required by this paragraph.  
137 The exemptions provided in subparagraphs 1. and 2. shall apply  
138 to machinery and equipment purchased for use in phosphate or  
139 other solid minerals severance, mining, or processing operations  
140 ~~only by way of a prospective credit against taxes due under~~  
141 ~~chapter 211 for taxes paid under this chapter on such machinery~~  
142 ~~and equipment.~~

143 6. For the purposes of the exemptions provided in  
144 subparagraphs 1. and 2., these terms have the following  
145 meanings:

146 a. "Industrial machinery and equipment" means tangible  
147 personal property or other property that has a depreciable life  
148 of 3 years or more and that is used as an integral part in the  
149 manufacturing, processing, compounding, or production of  
150 tangible personal property for sale or is exclusively used in  
151 spaceport activities. A building and its structural components  
152 are not industrial machinery and equipment unless the building  
153 or structural component is so closely related to the industrial  
154 machinery and equipment that it houses or supports that the  
155 building or structural component can be expected to be replaced  
156 when the machinery and equipment are replaced. Heating and air-  
157 conditioning systems are not industrial machinery and equipment  
158 unless the sole justification for their installation is to meet  
159 the requirements of the production process, even though the  
160 system may provide incidental comfort to employees or serve, to  
161 an insubstantial degree, nonproduction activities. The term

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162 includes parts and accessories only to the extent that the  
163 exemption thereof is consistent with the provisions of this  
164 paragraph.

165       b. "Productive output" means the number of units actually  
166 produced by a single plant or operation in a single continuous  
167 12-month period, irrespective of sales. Increases in productive  
168 output shall be measured by the output for 12 continuous months  
169 immediately following the completion of installation of such  
170 machinery or equipment over the output for the 12 continuous  
171 months immediately preceding such installation. However, if a  
172 different 12-month continuous period of time would more  
173 accurately reflect the increase in productive output of  
174 machinery and equipment purchased to facilitate an expansion,  
175 the increase in productive output may be measured during that  
176 12-month continuous period of time if such time period is  
177 mutually agreed upon by the Department of Revenue and the  
178 expanding business prior to the commencement of production;  
179 provided, however, in no case may such time period begin later  
180 than 2 years following the completion of installation of the new  
181 machinery and equipment. The units used to measure productive  
182 output shall be physically comparable between the two periods,  
183 irrespective of sales.

184       (d) Machinery and equipment used under federal procurement  
185 contract.--

186       1. Industrial machinery and equipment purchased by an  
187 expanding business which manufactures tangible personal property  
188 pursuant to federal procurement regulations at fixed locations  
189 in this state are partially exempt from the tax imposed in this



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190 ~~chapter on that portion of the tax which is in excess of~~  
191 ~~\$100,000 per calendar year~~ upon an affirmative showing by the  
192 taxpayer to the satisfaction of the department that such items  
193 are used to increase the implicit productive output of the  
194 expanded business by not less than 10 percent. The percentage of  
195 increase is measured as deflated implicit productive output for  
196 the calendar year during which the installation of the machinery  
197 or equipment is completed or during which commencement of  
198 production utilizing such items is begun divided by the implicit  
199 productive output for the preceding calendar year. In no case  
200 may the commencement of production begin later than 2 years  
201 following completion of installation of the machinery or  
202 equipment.

203         2. The amount of the exemption allowed shall equal the  
204 taxes otherwise imposed by this chapter ~~in excess of \$100,000~~  
205 ~~per calendar year~~ on qualifying industrial machinery or  
206 equipment reduced by the percentage of gross receipts from cost-  
207 reimbursement type contracts attributable to the plant or  
208 operation to total gross receipts so attributable, accrued for  
209 the year of completion or commencement.

210         3. The exemption provided by this paragraph shall inure to  
211 the taxpayer only through refund of previously paid taxes. Such  
212 refund shall be made within 30 days of formal approval by the  
213 department of the taxpayer's application, which application may  
214 be made on an annual basis following installation of the  
215 machinery or equipment.

216         4. For the purposes of this paragraph, the term:

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- 217           a. "Cost-reimbursement type contracts" has the same  
218 meaning as in 32 C.F.R. s. 3-405.
- 219           b. "Deflated implicit productive output" means the product  
220 of implicit productive output times the quotient of the national  
221 defense implicit price deflator for the preceding calendar year  
222 divided by the deflator for the year of completion or  
223 commencement.
- 224           c. "Eligible costs" means the total direct and indirect  
225 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding  
226 general and administrative costs, selling expenses, and profit,  
227 defined by the uniform cost-accounting standards adopted by the  
228 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.  
229 2168.
- 230           d. "Implicit productive output" means the annual eligible  
231 costs attributable to all contracts or subcontracts subject to  
232 federal procurement regulations of the single plant or operation  
233 at which the machinery or equipment is used.
- 234           e. "Industrial machinery and equipment" means tangible  
235 personal property or other property that has a depreciable life  
236 of 3 years or more, that qualifies as an eligible cost under  
237 federal procurement regulations, and that is used as an integral  
238 part of the process of production of tangible personal property.  
239 A building and its structural components are not industrial  
240 machinery and equipment unless the building or structural  
241 component is so closely related to the industrial machinery and  
242 equipment that it houses or supports that the building or  
243 structural component can be expected to be replaced when the  
244 machinery and equipment are replaced. Heating and air-

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conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories only to the extent that the exemption of such parts and accessories is consistent with the provisions of this paragraph.

f. "National defense implicit price deflator" means the national defense implicit price deflator for the gross national product as determined by the Bureau of Economic Analysis of the United States Department of Commerce.

5. The exclusions provided in subparagraph (b)5. apply to this exemption. This exemption applies only to machinery or equipment purchased pursuant to production contracts with the United States Department of Defense and Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons. In no event shall the provisions of this paragraph apply to any expanding business the increase in productive output of which could be measured under the provisions of sub-subparagraph (b)6.b. as physically comparable between the two periods.

Section 4. Section 212.0805, Florida Statutes, is repealed.

Section 5. For the 2006-2007 fiscal year, the sum of \$210,069 is appropriated from the General Revenue Fund and four positions are authorized to the Department of Revenue for the

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273 purpose of implementing the provisions of this act. Of the funds  
274 provided, \$191,825 are recurring and \$18,244 are nonrecurring  
275 funds.

276       Section 6. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1079

Exemption from the Tax on Sales, Use, and Other Transactions

**SPONSOR(S):** Altman

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee		Carlson	Carlson <i>MWC</i>
2) Finance & Tax Committee			
3) Commerce Council			
4)			
5)			

### SUMMARY ANALYSIS

The bill will create a new exemption from sales and use tax under chapter 212 for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope to 10 or more persons on a monthly, bimonthly or other regular basis.

The bill has an estimated total impact on state and local government revenue of (\$.9m) in FY 2006-07 and (\$.9m) in FY 2007-08.

The bill has an effective date of July 1, 2006.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. HOUSE PRINCIPLES ANALYSIS:**

**Lower Taxes** – The bill will exempt from sales and use tax advertising materials distributed free of charge in an envelope under certain circumstances.

#### **B. EFFECT OF PROPOSED CHANGES:**

##### **Present Situation:**

Section 212.08(7)(w), F.S., provides an exemption from the sales and use tax for newspaper, magazine, and newsletter subscriptions in which the product is delivered to the customer by mail and for free, circulated publications that are published on a regular basis, the content of which is primarily advertising, and that are distributed through the mail, home delivery, or newsstands. The exemption for newspaper, magazine, and newsletter subscriptions applies only to subscriptions entered into after March 1, 1997.

The Second District Court of Appeal has ruled that the exemption from sales and use tax for advertising publications provided in s. 212.08(7)(w), F.S., does not apply to advertising materials provided free of charge in an envelope because such advertising materials are not in a "publication" under s. 212.08(7)(w).<sup>1</sup>

##### **Effect of Proposed Changes:**

The bill will create a new exemption from sales and use tax under chapter 212 for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope to 10 or more persons on a monthly, bimonthly or other regular basis.

#### **C. SECTION DIRECTORY:**

Section 1. Creates new s. 212.08(7)(ccc), which exempts from tax advertising materials distributed free of charge in an envelope under certain circumstances.

Section 2. Provides an effective date of July 1, 2006.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The Revenue Estimating Conference estimated the following impact of the bill:

FY 2006-07	FY 2007-08
(\$.7m)	(\$.7m)

2. Expenditures: None.

<sup>1</sup> See *Dep't of Revenue v. Val-Pak Direct Marketing Systems, Inc.*, 863 So.2d 1 (Fla. 2d DCA 2003).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The Revenue Estimating Conference Estimated the following impact of the bill:

FY 2006-07	FY 2007-08
(\$.2m)	(\$.2m)

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill will provide an exemption to any entity that provides advertising materials through the mail in an envelope under certain circumstances.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

**B. RULE-MAKING AUTHORITY:** None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**



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2006

1 A bill to be entitled

2 An act relating to an exemption from the tax on sales,  
3 use, and other transactions; amending s. 212.08, F.S.;  
4 exempting certain advertising materials distributed free  
5 of charge by mail in an envelope; providing an effective  
6 date.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. Paragraph (ccc) is added to subsection (7) of  
11 section 212.08, Florida Statutes, to read:

12 212.08 Sales, rental, use, consumption, distribution, and  
13 storage tax; specified exemptions.--The sale at retail, the  
14 rental, the use, the consumption, the distribution, and the  
15 storage to be used or consumed in this state of the following  
16 are hereby specifically exempt from the tax imposed by this  
17 chapter.

18 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any  
19 entity by this chapter do not inure to any transaction that is  
20 otherwise taxable under this chapter when payment is made by a  
21 representative or employee of the entity by any means,  
22 including, but not limited to, cash, check, or credit card, even  
23 when that representative or employee is subsequently reimbursed  
24 by the entity. In addition, exemptions provided to any entity by  
25 this subsection do not inure to any transaction that is  
26 otherwise taxable under this chapter unless the entity has  
27 obtained a sales tax exemption certificate from the department  
28 or the entity obtains or provides other documentation as

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29 required by the department. Eligible purchases or leases made  
30 with such a certificate must be in strict compliance with this  
31 subsection and departmental rules, and any person who makes an  
32 exempt purchase with a certificate that is not in strict  
33 compliance with this subsection and the rules is liable for and  
34 shall pay the tax. The department may adopt rules to administer  
35 this subsection.

36       (ccc) Advertising materials distributed free of charge by  
37 mail in an envelope.--Likewise exempt are materials consisting  
38 exclusively of advertisements, such as individual coupons or  
39 other individual cards, sheets, or pages of printed advertising,  
40 that are distributed free of charge by mail in an envelope to 10  
41 or more persons on a monthly, bimonthly, or other regular basis.

42       Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1311  
**SPONSOR(S):** Troutman  
**TIED BILLS:**

Qualified Job Training Organizations

**IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee		Olmedillo <i>JO</i>	Carlson <i>MNC</i>
2) Fiscal Council			
3) Commerce Council			
4)			
5)			

### SUMMARY ANALYSIS

The bill provides an appropriation of \$3m in nonrecurring revenue in FY 2006-07 and for the following ten fiscal years, totaling \$30m, to a "qualified job training organization" meeting the requirements of the bill.

The bill:

- Defines the term "qualified job training organization";
- Requires the Office of Tourism, Trade and Economic Development (OTTED) to certify such an organization;
- Provides for the distribution of funds to a certified organization and specifies the use of those funds;
- Authorizes the Auditor General to examine a certified organization's use of funds for compliance with this provision;
- Permits OTTED to recover any misused funds as determined by the Auditor General and pursuant to laws and rules governing tax assessment;
- Permits the revocation of certification where funds have been misused; and
- Requires that funds for qualified job training organizations be distributed through OTTED.

The bill has an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill provides state funding to a private non-profit organization and gives the Auditor General audit authority over said organization.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

A number of job training organizations currently exist in Florida. These organizations train individuals for a variety of jobs ranging from employment in the service industry to executive positions.

Representatives from one job-training organization, Goodwill Industries, report that 95,000 individuals annually participate in vocational programs. Last year, Goodwill helped approximately 24,000 individuals obtain jobs in Florida resulting in more than \$234 million in new salaries.

Goodwill representatives also report that the majority of the organization's revenue is invested in creating jobs for those with disabilities, developing training opportunities that lead to employment in the local communities and assisting in job placement. The primary source of revenue for Goodwill is its retail operation. It currently operates over 300 stores across Florida which generate over \$100 million dollars annually, employs about 5,700 Floridians and pays more than \$7 million to the state in sales taxes.

##### Effect of Proposed Changes

The bill appropriates \$3 million per year from nonrecurring general revenue for ten years to OTTED to fund qualified job training organizations. For fiscal year 2006-2007, funding will be provided from nonrecurring general revenue. For the following ten fiscal years, from 2007-2008 through 2016-2017, funding will be appropriated from nonrecurring general revenue or as specifically provided in the General Appropriations Act. The funds will go directly to OTTED for distribution to organizations meeting the requirements of s. 288.1171, F.S. The funds must be used to encourage economic development through capital construction, capital improvements, or the purchase of equipment.

The bill specifies criteria to become a "qualified job training organization." This section of the bill also outlines OTTED's duties regarding certification of these organizations, funding parameters and the Auditor General's responsibility regarding examining an organization's use of state funds.

The bill defines a "qualified job training organization" as an organization that:

- Is accredited by the Commission for Accreditation of Rehabilitation Facilities;
- Collects Florida state sales tax;
- Has more than 100 locations within the state;
- Is exempt from income taxation under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code of 1986, as amended;
- Specializes in the retail sale of donated items;
- Provides job training and employment services to individuals with workplace disadvantages and disabilities; and
- Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.

The bill also provides that, in order to receive funding, an organization must be certified as a qualified job training organization by the Office of Tourism, Trade, and Economic Development.

The bill requires that certified qualified job training organizations only use their funding to encourage and provide economic development. More specifically, the funding must be used for capital construction, capital improvements, and the purchase of equipment that will result in expanded employment opportunities.

The Auditor General may audit a qualified job training organization to verify that the allocated funds are being expended as required. If the Auditor General finds non-compliance, OTTED may pursue recovery of the proceeds under the laws and rules "governing the assessment of taxes."

Failure to use proceeds as required under this bill constitutes grounds for revocation of the organization's certification.

#### C. SECTION DIRECTORY:

Section 1. Creates s. 288.1171, F.S., to provide definitions, duties for OTTED, distribution of funds, specific uses of the funds, grant of audit authority, revocation of certification.

Section 2. Provides for appropriations.

Section 3. Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill appropriates \$3 million per year from nonrecurring general revenue for ten years to OTTED to fund qualified job training organizations. For fiscal year (FY) 2006-2007, funding will be provided from nonrecurring general revenue. For the following ten fiscal years, from 2007-2008 through 2016-2017, funding will be appropriated from nonrecurring general revenue or as specifically provided in the General Appropriations Act.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires the Legislature to appropriate \$3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED. Therefore, providing funding for all qualified organizations.

**D. FISCAL COMMENTS:**

This bill requires the Legislature to appropriate \$3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

On lines 51-52, the bill permits OTTED to recover misused funds "pursuant to the laws and rules governing the assessment of taxes." This broad statement does not adequately prescribe a mechanism for recovery of funds. Moreover, this portion of the bill refers to the "assessment of taxes" which is a function typical of the Department of Revenue rather than OTTED.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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2006

A bill to be entitled

An act relating to qualified job-training organizations; creating s. 288.1171, F.S.; defining the term "qualified job-training organization"; providing for the Office of Tourism, Trade, and Economic Development to certify qualified job-training organizations; providing for the distribution of certain funds to a certified organization; specifying uses of the funds; authorizing the Auditor General to audit such organizations for certain purposes; providing for revocation of certification under certain circumstances; providing appropriations for a certain period; providing for appropriations to be distributed through the Office of Tourism, Trade, and Economic Development; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.1171, Florida Statutes, is created to read:

288.1171 Qualified job-training organizations; certification; duties.--

(1) As used in this section, the term "qualified job-training organization" means an organization that satisfies all of the following:

(a) Is accredited by the Commission for Accreditation of Rehabilitation Facilities.

(b) Collects Florida state sales tax.

(c) Operates statewide and has more than 100 locations



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29 within the state.

30 (d) Is exempt from income taxation under s. 501(c)3 or s.  
31 501(c)4 of the Internal Revenue Code of 1986, as amended.

32 (e) Specializes in the retail sale of donated items.

33 (f) Provides job training and employment services to  
34 individuals who have workplace disadvantages and disabilities.

35 (g) Uses a majority of its revenues for job training and  
36 placement programs that create jobs and foster economic  
37 development.

38 (2) To be eligible for funding, an organization must be  
39 certified by the Office of Tourism, Trade, and Economic  
40 Development as meeting the criteria in subsection (1).

41 (3) A qualified job-training organization that is  
42 certified must use the proceeds provided solely to encourage and  
43 provide economic development through capital construction,  
44 improvements, or the purchase of equipment that will result in  
45 expanded employment opportunities.

46 (4) The Auditor General may audit a qualified job-training  
47 organization to verify that distributions made to the  
48 organization have been expended pursuant to this section. If the  
49 Auditor General determines that the distributions have not been  
50 expended as required, the Office of Tourism, Trade, and Economic  
51 Development may recover such proceeds pursuant to the laws and  
52 rules governing the assessment of taxes.

53 (5) The failure to use the proceeds as required  
54 constitutes grounds for revoking certification.

55 Section 2. The sum of \$3 million per year is appropriated  
56 from nonrecurring general revenue for 10 years to the Office of

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57 Tourism, Trade, and Economic Development for the purpose  
58 specified in s. 288.1171(3), Florida Statutes. For the 2006-2007  
59 fiscal year, these funds are appropriated from nonrecurring  
60 general revenue. For the 2007-2008 through 2016-2017 fiscal  
61 years, the funds shall be appropriated from nonrecurring general  
62 revenue or as specifically provided in the General  
63 Appropriations Act. The funds shall be distributed by the Office  
64 of Tourism, Trade, and Economic Development to organizations  
65 meeting the requirements of s. 288.1171, Florida Statutes,  
66 solely to encourage and provide economic development through  
67 capital construction, improvements, or the purchase of equipment  
68 that will result in expanded employment opportunities.

69       Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1311**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Economic Development, Trade &  
2 Banking Committee  
3 Representative(s) Troutman offered the following:  
4

5 **Amendment**

6 On line(s) 40, after the period insert:  
7 After certification, the Office of Tourism, Trade, and Economic  
8 Development may release the funds pursuant to a contract with  
9 the qualified job training organization. The contract must  
10 address the performance conditions and sanctions for failure to  
11 meet the performance conditions and must require that salaries  
12 paid to officers and employees of the qualified job training  
13 organization comply with section 4958 of the Internal Revenue  
14 Code of 1986, as amended.  
15

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. 1311

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade and  
Banking

Representative(s) Troutman offered the following:

**Amendment (with title amendment)**

Remove line(s) 46-52 and renumber subsequent subsections.

===== T I T L E A M E N D M E N T =====

Remove line(s) 8-9 and insert:

specifying uses of the funds;

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